Mr. Justice Field
Submitted —
Dec: 27th 1864

SUPREME COURT OF THE UNITED STATES.

No. ~~150.~~ 85.

SIMEON B. CHITTENDEN, WALTER P. HATCH, TIMOTHY P. CHAPMAN, CHARLES S. SMITH, CALVIN DAY, ELIJAH H. OWEN, HORATIO E. DAY, AND GEORGE W. ROOT, APPELLANTS,

vs.

JOHN K. BREWSTER, DANIEL S. BREWSTER, AND JOHN A. CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

Record for further consideration
Reversed — [illegible] to Record

SUPREME COURT OF THE UNITED STATES.

No. 198.

SIMEON B. CHITTENDEN, WALTER P. HATCH, TIMOTHY P. CHAPMAN, CHARLES S. SMITH, CALVIN DAY, ELIJAH H. OWEN, HORATIO E. DAY, AND GEORGE W. ROOT, APPELLANTS,

vs.

JOHN K. BREWSTER, DANIEL S. BREWSTER, AND JOHN A. CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in chancery sitting, at Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, on Wednesday, the fifth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root, complainants in this suit, put in their place Messrs. Smith and Dewey, their solicitors, against John K. Brewster, Joseph Brewster, Daniel S. Brewster, John A. Clark, and William P. Malburn, defendants in this suit.

John K. Brewster, Joseph Brewster, Daniel S. Brewster, John A. Clark, and William P. Malburn, defendants in this suit, put in
2 their place Messrs. Beckwith and Merrick, their solicitors, at the suit of said complainants.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, came said complainants, by their solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bill of complaint against said defendants. Also at the said time, filed their bond for costs in said entitled cause. Which said bill of complaint and said bond are in the words and figures following, to wit:

3 UNITED STATES OF AMERICA:

Circuit court of the United States for the seventh circuit and northern district of Illinois, sitting in chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

To the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois.

Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, and Charles S. Smith, of the city of New York, who are citizens of the State of New York, and Calvin Day, Elijah H. Owen, Horatio E. Day, and Geo. W. Root, of the city of Hartford, who are citizens of

the State of Connecticut, bring this their bill against John K. Brewster, of the town of Winslow, Joseph Brewster, Daniel Brewster, and John A. Clark, of the town of Freeport, and William P. Malbonrn, of the city of Chicago, who are all citizens of the State of Illinois, and residing in said district aforesaid; and therefore your orators complain and say, that heretofore, to wit, in the term of October, in the year of our Lord one thousand eight hundred and fifty-seven, in the circuit court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgment of the said court, your orators, said Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, and Charles S. Smith, recovered against the said John K. Brewster, defendant in this suit, the sum of eighteen hundred and ninety-six dollars and fifty-seven cents, for the damage which they had sustained, as well by reason of the non-performance of certain promises and undertakings as for the costs *as for the costs* and charges of your orators by them about their suit in that behalf expended, which were adjudged to your orators in and by the said court, whereof the said John K. Brewster was convicted, as by the record of the said judgment in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orators pray leave to refer, will more fully and at large appear.

4

5 And your orators further show unto your honor, that the said judgment so recovered in manner aforesaid, remaining in full force and effect, andt he costs and damages aforesaid unpaid and unsatisfied, your orators last named, on or about the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-seven, for the purpose of obtaining satisfaction of the said judgment sued and prosecuted out of the said court a writ of the people called a *fieri facias*, directed to the United States marshal for the northern district of Illinois, that being the district in which said defendant, John K. Brewster, resided at the time of the issuing of said writ, by which said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of said John K. Brewster, defendant, in your district, you cause to be made the sum of eighteen hundred and ninety-six dollars and fifty-seven cents, which your orators in the said circuit court recovered against the said defendant as aforesaid, and that he should have the money at the clerk's office of said court, at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by your orators as aforesaid, and that he should have then and there this writ.

6 And your orators further show unto your honor, that the said writ of *fieri facias*, before the delivery thereof to the said marshal of the said district aforesaid, was duly indorsed, and was afterwards and on or about the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-seven, delivered to the said marshal to be executed in due form of law.

And your orators further show unto your honor, that the said marshal of said district aforesaid, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, returned on the said writ, to him in that behalf directed and de-

livered as aforesaid, that on the said 23d day of December, A. D. 1857, he demanded of the said John K. Brewster money or property whereof to satisfy said execution, who refused to pay or turn out property thereon, saying he had nothing to turn out; that after making diligent search and finding no property to levy upon, said marshal returned said writ wholly unsatisfied, as by the said writ of *fieri facias*, and the directions and the return of the said marshal indorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court on the day and year last mentioned, will more fully appear, and to which, or to a copy thereof, your orators pray leave to refer.

7 And your orators further show unto your honor, that the said judgment still remains in full force and effect, not reversed or satisfied, or otherwise vacated, and that the said John K. Brewster, or any one else in his behalf, has not paid the same to your orators, but has hitherto wholly neglected and refused so to do.

And your orators further show unto your honor that there is now actually and equitably due to your orators upon the aforesaid judgment, the sum of eighteen hundred and ninty-six dollars and fifty-seven cents, together with the interest thereon from the sixteenth day of November, one thousand eight hundred and fifty-seven, over and above all claims of said defendant by way of set-off or otherwise, besides marshal's fees on said execution.

And your orators further complain and say, that heretofore, to wit, in the term of October, in the year of our Lord one thousand eight hundred and fifty-seven, in the circuit court of the United States for the seventh circuit and northern district of Illinois, by the consideration and judgment of the said court, your orators, said Calvin Day, Elijah H. Owens, Horatio E. Day, and George W. Root, recovered against

8 the said John K. Brewster, defendant in this suit, the sum of five hundred and seventy-four dollars and sixteen cents for the damage which they had sustained, as well by reason of the non-performance of certain promises and undertakings as for the costs and charges of your orators, by them about their suit in that behalf expended, which were adjudged to your orators in and by the said court, whereof the said John K. Brewster was convicted, as by the record of the said judgment, in the office of the clerk of said court, reference being thereto had, and to which for greater certainty your orators pray leave to refer, will more fully and at large appear.

And your orators further show unto your honor, that the said judgment so recovered in manner last aforesaid remaining in full force and effect, and the costs and damages aforesaid unpaid and unsatisfied, your orators, on or about the twenty-first day of December, in the year of our Lord one thousand eight hundred and fifty-seven, for the purpose of obtaining satisfaction of the said judgment, sued and prosecuted out of the said court a writ of the people, called a *fieri facias*, directed to the United States marshal for the northern district of Illinois, that being the district in which said defendant, John K. Brewster, resided at the time of the issuing of said writ, by which

9 said writ the said marshal was commanded that of the goods, chattels, lands, and tenements of John K. Brewster, defendant, in your district, you cause to be made the sum of five hundred

and seventy-four dollars and sixteen cents, which your orators in the said circuit court recovered against the said defendant as last aforesaid, and that he should have the money at the clerk's office of said court at Chicago, in said district, in ninety days from the date thereof, to satisfy the judgment so recovered by your orators as aforesaid, and that he should have then and there that writ.

And your orators further show unto your honor, that the said writ of *fieri facias*, before the delivery thereof to the said marshal of the said district aforesaid, was duly indorsed, and was afterwards, and on or about the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-seven, delivered to the said marshal to be executed in due form of law.

And your orators further show unto your honor, that the said marshal of said district aforesaid, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, returned on the said writ, to him in that behalf directed and delivered as aforesaid, that on said 23d day of December, A. D. 1857,
10 he demanded of the said John K. Brewster money or property whereof to satisfy said execution, who refused to pay or turn out property thereon, saying he had none to turn out; that after diligent search and finding no property whereon to levy, said marshal returned said writ, last mentioned, wholly unsatisfied, as by the said writ of *fieri facias*, and the directions and the return of the said marshal endorsed thereon as aforesaid, filed in the office of the clerk of the said circuit court, on the day and year last mentioned, will more fully appear, and to which, or to a copy thereof, your orators pray leave to refer.

And your orators further show unto your honor, that the said last-mentioned judgment still remains in full force and effect, not reversed or satisfied or otherwise vacated, and that the said John K. Brewster, nor any one else in his behalf, has not paid the same to your orators, but has hitherto wholly neglected and refused so to do.

And your orators further show unto your honor, that there is now actually and equitably due to your orators, upon the last aforesaid judgment, the sum of five hundred and seventy-four dollars and sixteen cents, together with the interest thereon from the thirti-
11 eth day of November, one thousand eight hundred and fifty-seven, over and above all claims of said defendant, by way of set-off or otherwise, besides marshal's fees on said last execution. And your orators further show unto your honor, that on or about the first day of September, and before that time, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendant, John K. Brewster, together with the defendant, Joseph Brewster, were engaged as copartners under the name and style of firm Brewster Brothers, in the mercantile business at the town of Freeport, in the district aforesaid, and that your orators are informed and believe, that in the course of the said mercantile business of the said defendants, John K. Brewster and Joseph Brewster, divers persons became indebted to them as such copartners, to a large amount; and that the said defendant, John K. Brewster, at the time of filing this your

orators' bill of complaint, has debts due to him, and for which he holds divers securities and evidences to a large amount, and he has divers goods, wares, and merchandise, and other articles of personal property which belong to him, or in which he is in some way or manner beneficially interested, and that he has equitable interests and things in action of some nature or kind, which might and ought
12 to be applied to the payment of your orators' said judgment against him, the said defendant, John K. Brewster.

And your orators also charge that the said defendant, John K. Brewster, at the time of the rendition of the judgment first above mentioned, was and is now the owner of, or in some way or manner beneficially interested in, some real estate in this or some other State or Territory, or some chattels real, of some name or kind, or some contract or agreement relating to real estate, or the rents, issues, and profits of some real estate, and also that the said defendant, John K. Brewster, is owner of, or in some way beneficially interested in, the stock of some company, incorporated or unincorporated, or in the profits of some company or copartnership, and also that he has in his possession at the time of the filing of this your orators' bill of complaint, some money, in coin or bank bills, or that he has money deposited in some bank or elsewhere to his credit, or that he has money, or securities for the payment of money, held by some other person, in trust or otherwise, for his use and benefit.

And if the said defendant, John K. Brewster, has made any assignment or transfer of his property or effects, or any part
13 thereof, your orators expressly charge that they believe such assignment or transfer is merely colorable, and made with a view of protecting the property or effects of said defendant, John K. Brewster, so assigned, and placing the same beyond the reach of your orators' said judgment, and enabling the said defendant last named to control and enjoy the same and the avails thereof, or to hinder and delay your orators in the collection of their debts now in judgment, as aforesaid, and that so it would appear if the said defendants would state and set forth when and to whom such transfer or assignment was made, and what was the amount in value of the property or effects so assigned or transferred, and what were the terms upon which such transfer or assignment was made, and what disposition has been made of the property or effects so assigned or transferred, and in whose possession the same now is, or what has been done with the avails thereof. And your orators claim a full and complete discovery of all such property, effects, and things in action belonging to the said defendant, John K. Brewster, and of all trusts whereby any property, debts, or effects are held for the use or benefit of the said defendant, John K. Brewster, and of every assignment or transfer which the said defendant last named has made of
14 his property, debts, or other effects, and of the person or persons to whom such assignment or transfer has been made, the amount and value of the property, debts, or other effects so assigned or transferred, and the trusts and other conditions upon which such assignment or transfer was made, and all the facts and circumstances

relating thereto, and particularly what is the situation of the property, debts, or other effects assigned or transferred at the time of filing this your orators' bill of complaint.

And your orators further show unto your honor, that they have reason to believe, and do believe, that the said defendant, John K. Brewster, has property and other equitable interest, things in action, or effects of the value of more than five hundred dollars exclusive of all prior first claims thereon, and which your orators have been unable to reach by execution on said judgments against the said defendant last named, and that this your orators' bill of complaint is not exhibited by collusion with the said defendant or with any other person, or for the purpose of protecting the property or effects of the said defendant, John K. Brewster, against the claims of other creditors, but for the sole purpose of compelling payment and satisfaction of the judgment so, as aforesaid, recovered by your
15 orators against the said defendant, John K. Brewster.

And your orators further show unto your honor, that they are informed, and believe, and so charge the fact to be, that on or about the month of October, A. D. eighteen hundred and fifty-seven, said defendant, John K. Brewster, sold out his interest in the said firm of "Brewster Brothers" to his copartner, Joseph Brewster, and took in payment therefor, or for a portion thereof, the promissory notes of the defendant, Joseph Brewster, for thirty-five hundred dollars, said notes having no definite time of payment, and payable only upon a contingency, the precise terms and conditions of which contingency your orators are not advised and cannot state; that afterwards, and on or about the fourth day of November, A. D. eighteen hundred and fifty-seven, and since the commencement of the suits upon which your orators' said judgments were rendered, said John K. Brewster, made a pretended assignment or transfer of all his ostensible property and effects, including the said promissory notes of said Joseph Brewster, to the defendants, Daniel S. Brewster and John Clark, for the benefit of creditors, as is pretended.

And your orators further charge, upon information and be-
16 lief, that the said sale from John K. Brewster to said Joseph Brewster was not *bona fide*, and for a valuable or adequate consideration, but was fraudulent and void as to creditors, and was made in manner aforesaid by collusion between the said John K. Brewster and Joseph Brewster with intent to defraud the creditors of said John K. Brewster; that said John K. Brewster was then greatly in debt, and unable to pay his debts or in failing circumstances, which facts both he and *and* the said Joseph Brewster then well knew, or had reason to believe or suspect, and that the said sale was made under the expectation of insolvency and with the view to the making of an assignment soon after by the defendant, John K. Brewster, with the intention to hinder and delay his creditors.

And your orators further charge, upon information and belief, that the said pretended assignment was not made in good faith, but is merely colorable, and made with a view of protecting the property and effects of said John K. Brewster so assigned, and placing the

same beyond the reach of your orators' said judgments, and for the purpose of enabling said John K. Brewster to control and enjoy the same or the avails thereof, that said pretended assignment by
17 the terms thereof expressly authorizing said assignees to sell and dispose of the property so assigned or transferred to them upon a credit, and that such assignment is, for the reasons hereinbefore mentioned, fraudulent and void as to your orators.

And your orators further show unto your honor, that they are informed and believe, and so charge the fact to be, that the defendant, William P. Malburn, has in his possession or under his control a large amount of property and effects belonging to the said John K. Brewster, or in which he is some way beneficially interested, which might and ought to be applied in payment of your orators' said judgments; that said John K. Brewster and said Malburn were lately or are now copartners in the produce, commission, and milling business; that said John K. Brewster is now running a flouring mill and carrying on the business in the name of said Malburn, or some other person to your orators unknown; and your orators charge, upon information and belief, that said John K. Brewster so carries on the business in the name of another in order to cover up and conceal his interest therein; but that he, said John K. Brewster, is the real party interested, or has some beneficial interest in said mill property and business which ought to be turned out to his creditors. And your orators further show unto your honor, that they are informed
18 and believe, and so charge the fact to be, that, a short time before the commencement of this suit, said defendant, Malburn, purchased at a sheriff's sale a large quantity of personal property, which he left and which still remains in the possession of said John K. Brewster; and your orators further charge, upon belief, that said property so purchased by the defendant, Malburn, at sheriff's sale, as aforesaid, was paid for with the money of the said John K. Brewster, or with money in which he had an interest; and that the said goods ought to be sold and applied in payment of your orators' said debts.

And your orators well hoped that the said defendant, John K. Brewster, would have paid to your orators the amount due them on said judgments, or would have applied for that purpose any property, money, debts, or other equitable interest, or things in action belonging to him, or in which he is in any way interested, as in equity and good conscience he ought to have done.

But now so it is, may it please your honor, that the said defendants, combining and confederating together and with divers other persons to your orators unknown, but whose names, when dis-
19 covered, they pray may be inserted herein, with proper and apt words to charge them and contriving how to injure and defraud your orators in the premises, neglect or refuse to pay the amount so due to your orators on their said judgments, or to apply for that purpose any property, money, debts, or other equitable interests, or things in action belonging to the said defendant; and for reason whereof the said defendants set up a variety of unfounded

pretences. All which actings, doings, neglects, and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In tender consideration thereof, and forasmuch as your orators are remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable: to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true,
20 direct, and perfect answer make to all and singular the matters and things hereinbefore stated and charged, and particularly to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are required to answer; that is to say, the said defendants may fully set forth and discover, according to the best of their knowledge, remembrance, information, and belief, the nature and situation, amount and value, of all the property, interest, and effects of the said defendant, John K. Brewster, including all things in action, of whatever nature or kind, with all the particulars relating thereto; and that they may answer and state whether, at the time of filing this your orators' bill of complaint, he, the said defendant, John K. Brewster, has not debts due to him to a considerable amount; and if so, that they may state particularly the amount of such debts, respectively, and from whom the same are due, and what securities are held therefor; and also that they may state which and what amount of said debts are good and collectable, and what amount bad or doubtful; and whether, at the time of filing this your orators' bill of complaint, he has not some property, real or personal, in law or equity belonging to him, or held in trust for him, or in which he has some beneficial interest
21 of some kind or description; and if so, that they may state and set forth a full, true, and particular account thereof, and the nature and value of his interest therein; and that they may also state whether he has not money of some kind in his possession or under his control, or deposited to his credit or for his use, or in some way or manner held for his use and benefit; and if so, that they may state and set forth particularly the amount thereof, and how and by whom the same is held; and that they may also state whether he has any other equitable interests or things in action, or other means belonging to him, or in which he is in any way interested, whereby he could pay any part of the amount so as aforesaid due to your orators upon their said judgments against him, the said defendant, John K. Brewster.

And if the said defendant last named has made any assignment or transfer of his property and effects, or any part thereof, that then the said defendants may state and set forth, each for himself, jointly or

separately, generally, but not in items, what property or effects have been so assigned or transferred, and the value thereof, and
22 particularly when and to whom, and for what purpose, and upon what terms and conditions, such assignment or transfer was made, and what has been done under such assignment or transfer, and what has been done with the property or effects so assigned or transferred, and the avails thereof; and that the said defendant may specially state and set forth, each for himself, jointly or separately, in addition—

1st. When did said John K. Brewster sell his interest in the firm of Brewster Brothers to the defendant Joseph Brewster? What was then the amount and value of the property and effects of said firm? In what did it consist? What interest had said John K. Brewster therein? What was it worth at the time of such sale? What did he receive therefor? If the notes of said Joseph Brewster, when were such notes payable? For how large a sum were they given? What were the terms and conditions of said notes, and in whose possession are they now? And your orators pray that a full and complete discovery be made by the said defendant in relation to the said partnership of John K. Brewster and the defendant Malburn. When did it commence, and when dissolved? If dissolved, how much, and what was in-
23 vested in said produce and milling business? Who furnished the means to carry on said business? What has been done with the property so invested, or the avails thereof? What and how great an interest has said John K. Brewster in said flouring mill and business, and all the facts and circumstances relating thereto; and that the said defendants, John K. Brewster and Malburn, may state what was the amount and value of the personal property so purchased at sheriff's sale, as aforesaid; and in what did it consist; who furnished the money or means to pay for the same, and how much and what has been done with the said property so bought by the defendant Malburn at said sheriff's sale.

And your orators further pray this honorable court that the said sale from the defendant, John K. Brewster, to said Joseph Brewster, and the said assignment from John K. Brewster to the defendants, Daniel S. Brewster and John A. Clark, be declared fraudulent and void as to your orators, and that the same may be set aside by a decree of this court.

And that the said defendants, or some of them, may be decreed to pay your orators the amount so as aforesaid due to them
24 for principal and interest on their said judgments, together with your orators' costs and charges in this behalf sustained, and may be decreed to apply for that purpose any money or property, real or personal, in law or equity, debts, choses in action, or equitable interests belonging to said defendant, John K. Brewster, or held in trust for him, or in which he is in any way or manner beneficially interested; and that the said defendants may be enjoined and restrained from selling, assigning, transferring, delivering, negotiating, dis-

charging, receiving, collecting, incumbering, or in any way or manner disposing of or intermeddling with any debts or demands due to said John K. Brewster, or any bills, bonds, notes, drafts, checks, book accounts, mortgages, judgments, or other debts due to him, whether in his possession or held by some other person in trust for him or to his use or benefit; and also from assigning, transferring, or in any manner incumbering or disposing of or intermeddling with any money in coin, bank bills, drafts or checks, belonging to him, whether in his possession or held by any other person in trust for his use or benefit, or any stock or interest in any private or incorporated company, or any property, real or personal, things in action or chattels
25 real, held by him, or by any other person or persons for him, or in which he has any interest whatever, except when such trust has been created by, or the fund so held in trust has proceeded from, some person other than the said defendant, John K. Brewster.

And that the said defendant, John K. Brewster, may also be, in like manner, prohibited from making any assignment of his property, and from confessing any judgment for the purpose of giving preference to any other creditor over your orators; and from doing any other act to enable other creditors to obtain his property; and that a receiver may be appointed, according to the course of practice in this court, and with the usual powers of receivers in like cases, of all the property, equitable interests, things in action and effects of said defendant, John K. Brewster.

And that your orators may have such further or such other relief in the premises as the nature of their case shall require and as shall be agreeable to equity and good conscience.

May it please your honor to grant unto your orators the people's writ of injunction, issuing out of and under the seal of this
26 honorable court, to be directed to the said defendants and to their counsellors, attorneys, solicitors, trustees, and agents thereon, and thereby commanding and strictly enjoining the said defendants and the persons before mentioned in manner aforesaid.

And may it please your honor to grant unto your orators the people's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants, John K. Brewster, Joseph Brewster, Daniel S. Brewster, John A. Clark, and William P. Malburn, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by

and perform such order and decree therein as your honor shall seem agreeable to equity and good conscience. And your orators will ever pray, &c.

SIMEON B. CHITTENDEN.
WALTER T. HATCH.
TIMOTHY P. CHAPMAN.
SMITH & DEWEY,
Solicitors for Complainants.
E. M. DEWEY,
of Counsel.

27

CHARLES S. SMITH,
CALVIN DAY,
ELIJAH A. OWEN,
HORATIO E. DAY, and
GEORGE W. ROOT,
By E. S. SMITH,
their Agent and Attorney.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this fourth day of January, one thousand eight hundred and fifty-eight, personally came before me Abial R. Abbott, who, being duly sworn, on oath says that he is agent of the above-named complainants for the collection of the judgments in this bill mentioned; that all of said complainants are non-residents of the State of Illinois, and are not now either of them within the State of Illinois, to the deponent's knowledge; that deponent has read the foregoing bill and knows the contents thereof, and that the same is true except as to the matters and things therein stated upon information and belief, and as to those matters and things he believes it to be true.

A. R. ABBOTT.
WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Jan'y 4th, 1858.

WM. H. BRADLEY, *Cl'k.*

28 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, December term, A. D. 1857.

SIMEON B. CHITTENDEN *et al.*
vs.
JOHN K. BREWSTER *et al.* } In chancery.

I hereby enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and, in default of payment by

the plaintiffs of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this fourth day of January, A. D. 1858.

E. S. SMITH.

Endorsed: Filed Jan'y 4th, A. D. 1858.

WM. H. BRADLEY, *Clerk.*

29 Whereupon a writ of subpœna issued out of said clerk's office against said defendants, which said writ, together with the return of the marshal indorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to John K. Brewster, Joseph Brewster, Daniel S. Brewster, John A. Clark, and William P. Malburn, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of February next, to answer the bill of complaint of Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root, this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

30 To the marshal of the northern district of Illinois to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America at Chicago, aforesaid, this fourth day of January, in the year of our Lord one thosand eight hundred and fifty-eight, and of our independence the 82d year.

[SEAL.]

WM. H. BRADLEY, *Clerk.*

Memorandum.

The within named defendants are notified that unless they, and each of them, shall enter their appearance in the clerk's office of said court at Chicago, aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court for the northern district of Illinois, of the December term, A. D. 1857, in chancery.

SIMEON B. CHITTENDEN *et al.*
vs.
JOHN K. BREWSTER *et al.*

31 Take notice that we shall move this honorable court on the first Monday of February next, at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the defendants herein named, in accordance with the prayer of the bill herein.

Dated the 4th day of January, A. D. 1858.

Yours, &c.,

SMITH & DEWEY,
Compl'ts' Sol's.

To each of the defendants, esq's.

To the Marshal:

The marshal will serve this subpœna and notice for a writ of injunction personally upon each of the defendants, or in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling-house or usual place of abode of such defendant, with some free white person who is a member, or resident of the family, of suitable age and discretion.

COMPL'TS' SOL.

I hereby authorize and deputize J. W. Clyde, as special deputy for me and in my name to serve the within chancery subpœna, and make return on the same.

Chicago, January 4th, A. D. 1858.

JAS. W. DAVIDSON,
U. S. M., Nor. Dist. of Illinois.

32 I certify that on the 5th day of January, A. D. 1858, I served this subpœna and notice for injunction on said Joseph Brewster, Daniel S. Brewster, and John A. Clark, by delivering to each of them a copy hereof, and on said William P. Malburn, by leaving a copy hereof at his place of abode with a white person of over ten years of age, a member of his family, and informing said person of the contents thereof, and that on the 6th day of said month I served this subpœna and notice for injunction on said John K. Brewster, by delivering to him a copy hereof.

J. W. DAVIDSON,
U. S. Marshal,
By J. W. CLYDE,
Special Deputy.

Endorsed: Filed Jan'y 7th, 1858.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the first day of February, A. D. 1858, in the record of the proceedings of said court, in said entitled cause, is the following entry, to wit:

SIMEON B. CHITTENDEN, WALTER T. HATCH, TIMOTHY P. CHAPMAN. *et al.* *vs.* JOHN K. BREWSTER, JOSEPH BREWSTER, DANIEL S. BREWSTER, and JOHN A. CLARK. } In chancery.

33 C. Beckwith, esq., comes and enters the appearance of the defendants herein. And now come the complainants, by their solicitors, who move the court for an injunction against the defendant, John K. Brewster, on the bill filed therein, and no objection or resistance being made thereto; it is thereupon considered and adjudged by the court that an injunction issue against the said John K. Brewster, on the bill filed herein, enjoining and restraining him as prayed for in the complainants' bill.

On this day, to wit, the first day of March, A. D. 1858, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

SIMEON B. CHITTENDEN, WALTER T. HATCH, TIMOTHY P. CHAPMAN, CHARLES S. SMITH, CALVIN DAY, ELIJAH H. OWEN, HORATIO E. DAY, and GEORGE W. ROOT

vs.

JOHN K. BREWSTER, JOSEPH BREWSTER, DANIEL S. BREWSTER, JOHN A. CLARK, and WILLIAM P. MALBURN. } In chancery.

On application of the defendants, by their solicitor, the time within which they are required to file their answer herein is extended until Monday next.

34 On this day, to wit, the eleventh day of March, A. D. 1858, came said defendants, John A. Clark and Daniel S. Brewster, and filed in said clerk's office their answer in said entitled cause, which said answer is in the words and figures following, to wit:

35 Circuit court of the United States for the northern district of Illinois.

SIMEON B. CHITTENDEN, WALTER T. HATCH, TIMOTHY P. CHAPMAN, and CHA'S S. SMITH

vs.

JOHN K. BREWSTER, JOHN W. SHAFFER, JOSEPH BREWSTER, DANIEL S. BREWSTER, JOHN A. CLARK, and WM. P. MALBURN.

The joint and several answer of John A. Clark and Daniel S. Brewster, two of the defendants to the bill of complaint of Simeon B. Chittenden, William T. Hatch, Timothy P. Chapman, and Charles S. Smith, complainants, against John K. Brewster, John W. Shaffer, Joseph Brewster, William P. Malburn, and said John A. Clark, and Daniel S. Brewster, defendants.

These defendants, now and at all times saving and reserving unto themselves, and each unto himself, any and all manner of benefit and advantage of exception to the many errors, uncertainties, and insufficiencies in the said complainants' bill of complaint contained, for answer thereunto, or so much and such parts thereof as these defendants are advised it is material or necessary for them, or either of

them, to make answer unto, jointly and severally answering, say: That whether the said complainants did, at the October term, A. D. 1857, of the circuit court of the United States within and for the northern district of Illinois, recover a judgment against the defendants, John K. Brewster and John W. Shaffer, for the sum of ten hundred and ninety-seven dollars and two cents, as stated in said bill, or for any other and what sum, these defendants do not know; nor do these defendants, or either of them, know whether any writ of *fieri facias*, directed to the marshal of said northern dis-
36 trict of Illinois, was ever sued out by the said complainants upon said judgment, or delivered to said marshal to be executed, as alleged in said bill, or how or in what manner said writ of *fieri facias*, if any such was sued out and issued, was indorsed, or whether the same was ever returned by said marshal, or what return, if any, was made thereon by him. But these defendants admit, upon information only, that the said complainants did obtain a judgment in the said circuit court of the United States for the northern district of Illinois, but at what time and for what amount these defendants know not, nor are they informed, except by the allegations of said bill of complaint, and, therefore, cannot state; and as to the time of obtaining said judgment, and the amount thereof, and the issuing and return of a writ of *fieri facias* thereon, as alleged in said bill, these defendants require that the said complainants make strict proof, according to the rules and practice of this honorable court. And these defendants, further answering upon information and belief, admit that the judgment recovered by said complainants against the said defendants, John K. Brewster and John W. Shaffer, as aforesaid, has not been paid or satisfied in any manner, and that the same is now in full force and effect, and that there is now due, to the said complainants, from the said John K. Brewster and John W. Shaffer, on said judgment, the full amount thereof, with costs and interest, from the day of the rendition thereof.

And these defendants, further answering upon information and belief, admit that the said John K. Brewster and John W. Shaffer were for some time prior to the month of July, A. D. 1856, but how long these defendants know not, engaged in the mercantile business,
37 at the city of Freeport, in said district, as copartners, under the firm, name, and style of J. K. Brewster & Co., and that in the course of said business divers persons became indebted to them, but what the amount of such indebtedness was, or who the persons owing the same were, these defendants know not, neither have they, or either of them, any information relating thereto.

And these defendants, further answering upon information and belief, say that the said firm of J. K. Brewster & Co. was dissolved some time, or about the twentieth day of July, A. D. 1856; that the interest of the said John W. Shaffer therein was very small; that he put no capital into said firm, and only received a certain share of the profits, if any, as a compensation for his services; that at the time of the said dissolution, said John W. Shaffer sold to the said John K. Brewster all his interest in and to the stock of goods, books, and accounts,

notes, claims, demands, property, and effects of every kind belonging to said firm; and that said John K. Brewster, then and there, assumed and agreed to pay all the indebtedness of said firm, and to save and keep harmless the said John W. Shaffer in respect of the same.

And these defendants deny upon information and belief that the said John W. Shaffer has now, nor had at the time of the filing of said bill of complaint, or has had at any time since the dissolution of said firm, any interest whatever in the property, money, notes, demands, accounts, or effects of said firm; but how much was paid by the said John K. Brewster to the said John W. Shaffer for his interest in said firm, these defendants know not, and cannot state; but, upon information and belief, say that the sum did not exceed the
38 sum of fifteen hundred dollars, and that all the assets of said firm, of every name and description, were then assigned, transferred, and delivered to the said John K. Brewster for his own and benefit solely. But what the amount of the assets, debts, claims, and accounts of said firm remaining in the hands of the said John K. Brewster at the time of filing said bill of complaint was, or what the same is now, these defendants know not, and cannot state. But, upon information and belief, these defendants state that the debts due to said firm at the time of its dissolution aforesaid, which were unpaid at the time of the filing of said bill, if any such there were, were of very little value, if any; and insist and charge the fact to be, that said debts were all, or nearly all, uncollectable and worthless.

And these defendants, further answering upon information, deny that said John K. Brewster had at the time *at the time* of the filing of said bill, or have now, any goods, wares, merchandise, or any other personal property of any kind and description, except their household furniture and usual wearing apparel for himself and family, in which he was or is in any manner interested, and which might or ought to be applied to the payment of the said complainants' judgment against him, save and except that which is hereinafter specially mentioned.

And these defendants, further answering upon information and belief, deny that the said defendants, John K. Brewster and John W. Shaffer, are or were at the time of the filing of said bill jointly interested in any real estate in this or any other State or Territory, or in any chattels real of any name or description whatever, or in any contract or agreement relating to real estate, or in the rents, issues, or profits of any real estate; or that they were or are, either jointly or separately, or in any manner whatever, beneficially interested in the stock of any company, incorporated or unin-
39 corporated, except as hereinafter stated, or in the profits of any company or copartnership, or that they had in their possession at the time of the filing of the said bill, or have now, any money in coin or bank bills; or that they have or had any money deposited in any bank or elsewhere to their credit, or to *or to* the credit of either of them, or that they have or had money or securities for the payment of money held by any other person in trust or otherwise for them, or either of them, or for their benefit, or the benefit of either of them. But these defendants, upon information and belief,

only admit that said John K. Brewster alone had, previously to the filing of said bill of complaint, interest in and was the owner of certain real estate, situate in the counties of Stephenson, Carroll, and Jo Daviess, subject to certain incumbrances thereon; but that prior to the filing of said bill, or the rendition of the judgment in said bill set forth, the said Brewster *the said Brewster* had assigned the same to these said defendants in trust for the benefit of his, the said John K. Brewster's, creditors, as is hereinafter more fully stated and set forth; and as to the said John W. Shaffer, these defendants further answering, upon information and belief only, say that he, the said Shaffer, is the owner of or has some interest in a lot of land in the city of Freeport aforesaid, with the improvements thereon, together of the value of three thousand or three thousand five hundred dollars, and that said premises are incumbered by a mortgage or deed of trust thereon for the sum of two thousand five hundred dollars, and that said John W. Shaffer has or had some interest in four lots in the town of De Soto, in the Territory of Nebraska, of the value, as they are informed, of twenty-five dollars each, and also in two lots in
40 the town of Chippewa, Dunn county, Wisconsin, of small value, but of what value they are not informed; but whether the said Shaffer has any other real estate, or is in any way or manner interested in any other real estate, these defendants do not know; neither have they, or either of them, any means of knowledge, and therefore they cannot state.

And these defendants, further answering, upon information and belief, say and insist that the said John W. Shaffer now has or holds in his possession all the property and effects of every kind in which he is in any way or manner interested; and as to the sales, transfers, and assignments of property and effects, as hereinafter more fully set forth, made by the said John K. Brewster, these defendants, upon information and belief, deny that they were merely colorable, or made for the purpose of protecting his property or placing the same beyond the reach of his own creditors, or the creditors of the same firm of John K. Brewster & Co., or of enabling him to continue to enjoy and control the same or the proceeds thereof, or for the purpose of hindering and delaying the said complainants or any other creditor or creditors of said firm of J. K. Brewster & Co., or of said John K. Brewster, in the collection of their debts, or for any other fraudulent or improper purposes, or with any fraudulent or improper purpose whatever, or that it would so appear, if all the facts and circumstances of such sales, transfers, and assignments were fully set forth and stated by the said defendants.

And these defendants, further answering, upon information and belief, deny that the said defendants, John K. Brewster and John W. Shaffer, or either of them, had at the time of the filing of the said bills, or hath now, property or other equitable interest or choses in action or effect, of the value of more than five hundred dollars,
41 or any other sum, inclusive of all prior first claims thereon, and which said complainants have not been able to reach by execution on their said judgment, or that the said defendants, John

K. Brewster and John W. Shaffer, or either of them, have any property or effects of any kind which they ought or could apply in payment of said judgment against them, or that they had any such property or effects at the time of the filing of said bill.

And these defendants, further answering, admit that the said firm of T. K. Brewster & Co. was dissolved long prior to the fourth day of November, A. D. 1857; and as these defendants are informed and believe, on or about the 20th day of July, A. D. 1856; and that, on the said 4th day of November, A. D. 1857, the said John K. Brewster made an assignment of all his property, real and personal, of every kind anddescription whatever, unto these said defendants, John A. Clark and Daniel S. Brewster, in trust, for the benefit of all his creditors, according to the preference therein stated and set forth, a copy of which said assignment, and the schedules thereto attached, is hereunto annexed, marked exhibit "A," and is made a part of his answer.

These defendants also admit, that the said Daniel S. Brewster, one of these defendants, is a brother of the said John K.; and that the said John A. Clark, the other of these defendants, was, from the fall of the year 1853 up to and until about the month of September, 1854, a partner of said John K. Brewster in the produce and grain business at Freeport aforesaid; but these defendants state and insist that the said John K. Brewster is still indebted to one of these defendants, the said John A. Clark, on account of said partnership; and these defendants deny that the said John A. Clark,
42 one of these defendants, has been a partner of the said John K. Brewster, or, since the fall of the year 1854, in any way connected with him in business.

And these defendants, further answering, deny that the said assignment was or is fraudulent, or that it was made for the purpose of hindering or delaying the complainants, or any other creditor or creditors of the said John K. Brewster, or defrauding them, or any of them, in the collection of their debts; but these defendants admit that the said assignment gives, or assumes to give, to said assignees therein named, power to sell and dispose of the property thereby assigned, either at public or private sale, to such person or persons, for such price, and on such terms and conditions, and either for cash or upon credit, as in their judgment may seem best and most for the interest of all the parties concerned; but these defendants deny that any power, not proper to be exercised by these defendants, as said assignees, was intended to be conferred thereby, either by the said John K. Brewster or by the said assignees, or that the said John K. Brewster intended that the said power to sell on credit should be used by said assignees in any manner to the prejudice or injury of his or any one of his creditors, or that the same should be used in any way or for any purpose by them, except so far as could be done lawfully, honorably, and for the benefit of all persons interested in said estate. And these defendants further deny, that they, as said assignees, have in any way, or at any time, used or exercised said power to sell on credit, or that they intend to use or take any advantage of the same for any purpose whatever, save in a lawful manner

and for the benefit and advantage of said trust estate. And
43 these defendants respectfully submit to this honorable court, that said assignment is not, by reason of said power, either fraudulent or void as against the creditors of said John K. Brewster, and especially as against the said complainants, or any other person or persons whatsoever.

And these defendants, further answering, upon information and belief, admit that the said defendants, John K. Brewster and Joseph Brewster, were, up to and until about the 20th day of October, A. D. 1857, partners in business at said Freeport, as charged in said bill of complaints, under the firm name and style of Brewster Brothers; and that on the said 20th day of October, as these defendants are informed and believe, the said John K. Brewster sold and transferred to the said defendant, Joseph M. Brewster, all right, title, and interest of him, the said John K. Brewster, in and to said partnership, its property, goods, effects, notes, and accounts, of whatsoever name and nature, in consideration of the sum of three thousand dollars, and upon the further consideration, as these defendants are informed and believe, that the said Joseph M. Brewster should pay all the debts due by the said firm of Brewster Brothers, which said debts, as they are informed and believe, amounted to thirty-six thousand dollars; and that the said Joseph M. Brewster undertook, and then and there bound himself, to make said payment of three thousand dollars, by paying thirty out of sixty-five notes which were then outstanding against the said John K. Brewster, signed by him as principal, and by said defendants, Joseph M. Brewster and Daniel S. Brewster, and Oliver W. Brewster, father of the said John K., as security, said notes bearing date the 18th day
of May, A. D. 1857, each for one hundred dollars, and payable,
44 one on the 18th day of November, and the remainder at intervals of thirty days thereafter; that is to say, the first note falling due on the 18th day of November, after the date thereof, and one every thirty days thereafter until all have become due and payable; said notes, so assumed, to be paid by the said Joseph M. Brewster, being the thirty which should last become due of the said sixty-five unpaid notes; and the said defendant, Joseph M. Brewster, then and there executed his contract, a copy of which is hereto annexed, marked "B." And these defendants state that the said notes, so agreed to be paid by the said Joseph Brewster, were outstanding against the said John K. Brewster at the time of the sale of his interest in said partnership as aforesaid, and were given by the said John K. to one Joseph Norris, in part payment for lands bought by the said John K. of the said Joseph Norris, at or about the time of the making of said notes, and that the same were, and such of them as are not now paid are now the bona fide indebtedness of the said John K. Brewster; and that the said notes were not, as these defendants are informed and believe, otherwise secured than by the joint signing or indorsement of the same by others, as above stated. But as to the manner in which the balance of said purchase price

was paid, or agreed to be paid, by the said Joseph Brewster, these defendants have no knowledge or information.

But these defendants state and insist that the said sale was fairly and honestly made, in all respects, as they are informed and believe, and that the same was not, and is not now, fraudulent or void in any respects; and that the said Joseph Brewster paid a fair and reasonable price for the interest of the said John K. Brewster in
45 and to the said partnership property, assets, and effects; and that the said John K. Brewster has no interest and never pretended to have any interest in the business of said firm after said sale was perfected; and these defendants, either one or both of them, had no interest in or connexion with said sale, and are not apprized of the facts thereof any further than is above stated.

And these defendants, further answering, say that they do not know and are not informed what were the relations existing between the said John K. Brewster and the said defendant, William P. Malburn, or whether they were or were not parties in business prior to the said fourth day of November, A. D. 1857. But these defendants are informed and believe that the said Malburn and the said John K. Brewster were in some manner connected in the purchase of produce, pork, &c. But these defendants state, upon information and belief, that the said connexion was dissolved prior to the date of said assignment, and that upon a settlement the said John K. Brewster was found to be indebted to the said Malburn, or to some other person for whom the said Malburn was acting, in about the sum of ten thousand dollars; but in what manner said indebtedness accrued, and whether it was for money advanced to the said John K. Brewster, or for property purchased by him, these defendants know not and are not informed.

And these defendants further answering, upon information and belief, admit that some time in the month of December, A. D. 1857, and after the making of said assignment, the said William P. Malburn purchased at coroner's sale, had and made under and by virtue of an execution against the said John K. Brewster, divers articles of personal property, but how many and what those articles were
46 these defendants know not and cannot state. And these defendants further state, that said execution was issued and in the hands of the coroner of said county of Stephenson long before the making of said assignment by said John K. Brewster, and was upon a judgment recovered against him in the circuit court of said county of Stephenson at the September term, A. D. 1857; and, as these defendants are informed and believe, only a small part of said execution was satisfied by said sale; but what said Malburn did with the property so bid off by him at said sheriff's sale, these defendants are not informed and do not know. But, upon information and belief, these defendants deny that said property, or any part thereof, was paid for with money belonging to the said John K. Brewster, or that the said John K. Brewster has now, or has had at any time since said sale, any interest in or right to said property; and whether the same

was in his possession at the time of the filing of said bill, or has been in his possession at any time since the sale thereof, these defendants do not know; but if the same has been in his possession, these defendants insist that it has been suffered to remain there by the said Malburn simply as an act of friendship towards the said John K., and for his accommodation.

And these defendants further state, that the mills mentioned in the said bill of complaint were by the said John K. Brewster assigned to these defendants, assignees as aforesaid, in and by said instrument of assignment before referred to, and hereto annexed and marked "A." That since the date of said assignment, the said mills have been operated by said Brewster, and in his possession as tenant of these defendants, assignees; and so far as these defendants know and
47 believe, the said Brewster has since that time had no other interest in the milling business there carried on, than the usual and customary compensation paid to millers for the grinding of grain into flour, which, as these defendants are informed and believe, is and has been barely sufficient to pay the reasonable rent of said mills and to support his family, and that the said John K. Brewster has since his assignment had no interest in said mills or milling business which he ought to or could apply to the satisfaction of the said complainant's judgment.

And these defendants, further answering, say that immediately after the execution of said assignment by the said John K. Brewster, the said Brewster and his wife, in pursuance of the provisions of said assignment, executed and delivered to these defendants, assignees, quitclaim deeds to all the real estate described in the schedule attached to said assignment, which deeds were duly recorded in the counties wherein said real estate is situated; and these defendants are informed and believe said assignments and deeds embrace all the lands and real estate then owned by the said John K. Brewster, or in which he had or has any interest whatsoever. And the same are fully described in the schedule to said assignment, a copy of which is hereto annexed.

And these defendants further say, that they cannot state the value of said real estate, or any part thereof, but they are informed and believe that the same is nearly all encumbered by judgments, mortgages or deeds of trust, executed thereon by the said John K. Brewster, to a large amount, and unless said judgments, mortgages or deeds of trust, are satisfied by the payment of the debts thereby secured, very little can be realized therefrom, beyond the payment of the debts so secured thereby.

48 And these defendants further say, that immediately after the execution of said assignment, the defendants took possession of the notes, accounts, papers and books of the said John K. Brewster, mentioned and set forth in said assignment; also of all the personal property therein named and described, and which had not been levied on by the coroner of said Stephenson county, under and by virtue of the executions against the said John K. Brewster, as aforesaid; and that they, as said assignees, have since been engaged in arranging

said notes, accounts and papers, and in collecting and reducing the same into money, as they have been able so to do.

And these defendants further say, that so far as they are advised, the schedule to said assignment correctly sets forth all the notes held and owned by the said John K. Brewster, at the date of said assignment.

And these defendants hereto annex, as an exhibit, marked "C," a correct list, as they believe, of the accounts which appeared to be due and owing to the said John K. Brewster at the date of said assignment, taken from his books lately in the possession of these defendants, assignees.

And these defendants, upon information and belief, say that said notes and accounts include all the debts due and owing, or likely to become due and owing to said John K. Brewster at the date of said assignment; and that the said John K. Brewster had not at the date of the filing of said bill, and has not now, any notes or accounts, claims or demands, of any kind or description whatever, due or owing to him or to become due or owing to him, either in his possession or held by any other person for his use or benefit, in which he had or has any interest whatever, that said assignment was honestly and fairly made, and conveyed to the said assignees all the property, rights, credits and effects of the said John K. Brewster, and the defendants are informed, and believe, that the said Brewster has acquired no property of any kind since said assignment.

The defendants further state, that the said John K. Brewster, on the day of the making of said assignment, was and ever since hath been, and still is, wholly insolvent and unable to pay his debts, and that they verily believe that he made said assignment honestly and in good faith, in order that his creditors might have the full benefit of all his property and effects, and be paid thereby, so far as the same might be sufficient for that purpose.

And these defendants, further answering, say that they know not and are not informed what debts, if any, were at the time of the filing of the said bill, or are now due and owing to the said John W. Shaffer, but on belief only these defendants deny that said Shaffer had then or has now anything due and owing to him, excepting it may be some small amounts due to him as fees by virtue of his office of sheriff for said Stephenson county, now held by him.

And these defendants further say, that they are wholly unable to state what part or proportion of the notes and accounts assigned to these defendants by the said Brewster, as aforesaid, are good and collectable, and what part of the same are bad or doubtful, but upon information and belief these defendants say that a considerable portion thereof are at present uncollectable, by reason of the insolvency or absence of the parties owing the same, but that ultimately they feel little doubt that the greater part of said notes and accounts will be paid. They further state that a considerable number of said notes are now in the hands of different persons as collateral security for the payment of money owing them by said Brew-

ster, and were left by him as such security long before the making of said assignment, and that the notes so left as security are, as these defendants are informed and believe, correctly stated in the margin of the list of notes attached to said assignment, and in the copy of the same hereto annexed, as exhibit "A."

And these defendants, further answering, say, that the exhibit hereto marked "D" contains a true and accurate account of all moneys received by these defendants, or either of them, on account of the choses in action so assigned to these defendants, as aforesaid, together with the names of the several persons from whom the same was received.

And these defendants, further answering, say, that since the filing of the said bill of said complainants against them, James Mitchel, Holden Putnam, Roderick Richardson, and John A. Page, copartners under the name and style of James Mitchel & Co., have filed in the circuit court in and for the county of Winnebago, in the said State of Illinois, their bill of complaint, upon the chancery side thereof, against these defendants, and have prayed the appointment of a receiver to take and carry out the trusts created in and by said deed of assignment of said John K. Brewster to these defendants, and that upon a hearing of said bill and petition, James Mitchel was duly appointed receiver, and has entered upon his said office, and these defendants have paid over and transferred, under the order of said court, to said James Mitchel, appointed receiver as aforesaid, all the said notes, accounts, and choses in action, assigned to them as
51 aforesaid, and in their hands at the date of said appointment.

A copy of said bill and the proceedings thereon, together with the order of said court, is hereto attached and marked exhibit "E," to which these defendants ask leave to refer and make part of their answer to said complainants' bill.

And these defendants, further answering, say, that all of the personal property mentioned and described in schedule "B," in exhibit "A," hereto annexed, and to which these defendants beg leave to refer and make part of this their answer, to wit: " two horses, one wagon, one top buggy, twenty-three head of neat cattle, one running reaper, three ploughs, one harrow, one cutting box, one fanning mill, three sheds, ten tons of hay, one set of harness, about four hundred bushels of oats, about one thousand bushels of wheat in Winslow mills," were levied upon and sold under and by virtue of an execution issued out of the circuit court of the county of Stephenson and State of Illinois, upon a judgment rendered in said court in favor of Jabez Howe *et al.*, plaintiffs, against the said John K. Brewster, and J. Wilson Shaffer, and Louis T. Burrell, defendants, and that these defendants have received none of the proceeds of the sales of said property.

And these defendants, further answering, upon information and belief, admit that said John W. Shaffer is the owner of one share of stock in the Rabine and Misissippi Railroad Company, but of what value the same may be they are not informed and cannot state; and that he is the owner of one horse, one sleigh, and one set of harness, of the value, as they are informed, of sixty dollars.

52 And these defendants deny all and all manner of unlawful combination and confederacy, wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' bill of complaint contained, material or necessary for these defendants to make answer with, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants and each of them; all which matters and things these defendants and each of them are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN A. CLARK,
DAN'L S. BREWSTER.

STATE OF ILLINOIS,
Stephenson County, ss:

On this 9th day of March, A. D. 1858, before me personally appeared the above named John A. Clark and Daniel S. Brewster, and made oath that they have severally read the above answer subscribed by them, and know the contents thereof, and that the same is true of their own knowledge, except as to the matters which are therein stated to be on their information or belief, and as to those matters they belive it to be true.

Subscribed and sworn to before Homer N. Hibbard, a notary public in and for said county, on the day and year last above written. Witness my hand and notarial seal.

[SEAL.]

H. N. HIBBARD, *Notary Public.*

53 *Exhibit A.*

This indenture, made the fourth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, between John K. Brewster, of the county of Stephenson and State of Illinois, of the first part, and Daniel S. Brewster and John A. Clark, of the county and State aforesaid, of the second part, witnesseth; that whereas the said John K. Brewster is justly indebted in sundry sums of money, and by reason of several losses which have recently attended his business operations has been unable to pay and discharge all his liabilities with punctuality or in full, and the said John K. Brewster is now desirous of making a fair and just distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises, and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released, assigned, transferred, and set over, and by these presents doth grant, bargain and sell, release, assign, transfer, and set over unto the said party of the second part, and to their executors, administrators, and assigns forever, all and singular the lands, tenements, and hereditaments situate, lying and being in the counties of Stephenson, Carroll, and Jo Daviess, in said State of Illinois, and

also all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, books of account,
54 evidences of debt, and property of every name, nature whatever and wheresoever of the said John K. Brewster, the said party of the first part, more particularly enumerated and described, but not excluding any property not described in the schedule hereto attached, and marked "A:" to have and to hold the same, and every part and parcel thereof, with the appurtenances, to the said party of the second part, their executors, administrators, and assigns, in trust, nevertheless, and to and for the following use, intents, and purposes, that is to say: that the said party of the second part shall take possession of all and singular the lands, tenements, and hereditaments, and all other the property hereby assigned or intended so to be, and sell and dispose of the same either at public or private sale to such person or persons for such prices and on such terms and conditions, and either for cost or upon credit, as in their judgment may appear best and most for the interest of the parties concerned, and convert the same into money, and also to collect all and singular the said debts due, bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon to execute, acknowledge, and deliver good and sufficient deeds and bills of sale, releases, and all other instruments of conveyance that may be necessary and proper to effect a sale and transfer of any and all the estate, property, and effects hereby conveyed or intended so to be; and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the just, reasonable, and usual expenses, costs, charges, and commissions
55 of making, executing and carrying into full effect this assignment, and the objects thereof; in doing which the said party of the second part is hereby authorized and empowered to employ one or more agents, attorney or attorneys, who shall be paid out of such proceeds a reasonable compensation for their services. And the said party shall also, at the charge of the said trust fund, obtain and at all times keep suitable and reasonable insurance on the said property and effects hereby assigned and conveyed, and shall also pay all taxes now due or to become due on said property, until the same shall be sold and disposed of, and the residue of the proceeds of such sales and collections shall be considered as the net proceeds of the property and effects hereby assigned.

And first, by and with the net proceeds, the said party of the second part shall pay and discharge in full the several and respective debts, notes, demands, and sums of money over to the several persons named and designated in the schedule hereto annexed, and marked "B," together with interest due and to grow due on such debts, notes, demands, and sums of money, respectively. And if such net proceeds shall not be sufficient to pay the said debts and liabilities mentioned in said schedule B, in full, then the same shall be paid *pro rata* with such net proceeds, share and share alike, as far as the same will go in proportion to their respective amounts.

And secondly, by and with the rest, residue, and remainder of such net proceeds, if any shall remain after the payment in full of the said debts and liabilities mentioned in the said schedule B, said party
56 of the second part shall pay to John W. Shaffer and Lewis F. Burrell, or either of them, all such sum or sums of money as the said John W. Shaffer and the said Lewis F. Burrell, or either of them, may or shall be legally liable to pay on any promissory note or notes made and executed to the said several parties and firms mentioned in schedule marked "C," and hereto annexed, and which said notes have been executed in part by the late firm of John K. Brewster & Company, and others of the said notes have been executed in the name of said firm of John K. Brewster & Company, since the dissolution of said firm; (which said several debts mentioned in said schedule marked "C," the said party of the first part, upon the dissolution of said firm of John K. Brewster & Co., assumed, and agreed to and with said John W. Shaffer and Lewis F. Burrell to pay and discharge, but has hitherto been unable so to do;) and if the said rest, residue, and remainder of said net proceeds shall not be sufficient to pay the said legal liabilities of the said John W. Shaffer and Lewis F. Burrell in the premises, then the same shall be paid *pro rata* with such rest or residue and remainder of said net proceeds in proportion to the amount for which they shall severally or jointly legally be liable as aforesaid.

And thirdly, by and with the rest, residue, and remainder of said net proceeds, if any shall remain after paying in full the said legal liabilities of said John W. Shaffer and the said Lewis F. Burrell above specified, the said party of the second part shall pay and discharge in full the several respective debts, notes, and sums of money due or to become due from the said party of the first part, or for which he is liable to the several persons and firms named and designated
57 in the schedule hereto annexed, and marked "D," together with the interest due and to grow due on such debts, notes and sums, respectively, and if the said rest, residue, and remainder of such net proceeds shall not be sufficient to pay such debts and liabilities mentioned in said schedule "D" in full, then the same shall be paid *pro rata* with such rest, residue, and remainder of said net proceeds, share and share alike, as far as the same will go in proportion to their respective amounts.

And fourthly, by and with the rest, residue, and remainder of said net proceeds, if any shall remain after paying in full the said debts and liabilities mentioned in said schedule "D," the said party of the second part shall pay and discharge all the other debts, demands, and liabilities whatsoever, now existing, whether due or hereafter to become due against the said party of the first part, provided such remainder shall prove sufficient for that purpose; and if insufficient, then to apply such remainder to the payment and liquidation of such debts and demands *pro rata*, share and share alike, according to their respective amounts, as far as such remainder will extend for that purpose.

And lastly, the said party of the second part shall return the surplus, if any remains after the payment of all debts due by said party

of the first part as aforesaid, to the said party of the first part, his executors, administrators, or assigns.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, at Freeport, the day and year aforesaid.

JOHN K. BREWSTER. [L. S.]

The words "but not excluding any property not described" on first page, "with" on third page, "legal" on fourth page were inserted, and the words "debts and" on fourth page were erased before execution.

Witness: H. N. HIBBARD.

58 We, the undersigned, Daniel S. Brewster and John A. Clark, having been appointed assignees in and by the foregoing deed of assignment, do by these presents accept the trust, and agree to carry out the same.

Witness our hands.

DANIEL S. BREWSTER. [SEAL.]
JOHN A. CLARK. [SEAL.]

Witness: H. N. HIBBARD.

STATE OF ILLINOIS,
Stephenson County, ss:

I, Homer N. Hibbard, a notary public in and for said county, do hereby certify that John K. Brewster, personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

[L. S.] Given under my hand and notarial seal this fourth day of November, A. D. 1857.

HOMER N. HIBBARD,
Notary Public.

59 *Schedule A.*

Lands situated in Stephenson county and State of Illinois.

The northwest quarter of the northeast quarter of section number twenty-seven, (27;) the south half of the southwest quarter of section number twenty-seven, (27;) the east half of the northeast quarter of section number thirty-three, (33;) the west half of the northeast quarter of section number thirty-four, (34;) and the northwest quarter of section number thirty-four, (34;) all the said tracts being in township number twenty-nine (29) north, of range number seven (7) east, of the fourth principal meridian; containing, in all, four hundred and forty acres, (440,) more or less.

The mills and mill lot at Winslow, in said county of Stephenson, with the land privileges, with the appurtenances thereunto belonging, and described as follows, to wit: commencing at the northwesterly

corner of lot number one, (1,) in said Winslow; thence westerly on a line which shall range with the northern boundary of said lot to a point on the north and south line, running through the middle of section twenty-two, (22,) on which said mills and lands are situated; thence from said point south to the centre of said section twenty-two, (22;) thence still south to a point forty rods distant from said centre; thence east to a point due north of the angle on Hubbard street, near the southeasterly corner of the burying ground fence, then south from said point to said angle in Hubbard street; thence along Hubbard street to Sewel street; thence along the mill lot to the southeast corner of lot eighty-seven, (87;) thence westerly fifty feet, (50;) thence northerly eighty feet, (80,) parallel with the west line of lots eighty-six and eighty-seven, (86 and 87,) to the
60 south line of lot eighty-five, (85,) westerly to the southwest corner of lot eighty-five, (85;) thence along the mill lot to the southwest corner of forty-two, (42;) thence northwesterly along the rear of the lots bordering upon the mill-pond to the place of beginning.

Also that portion of the southeast quarter of the northwest quarter of section twenty-two, (22,) in township number twenty-nine (29) north, of range six (6) east, that lies south of the mill-race, containing thirty-nine acres, more or less.

Also lot number forty-four, (44,) of the town of Winslow, on which stands the new stone mill; all of which is according to the recorded plot of said town, reserving all roads which are laid out over or across any part of said land lying in said town of Winslow. It being expressly understood that said grantors, their heirs and assigns, shall have the right forever to maintain the dam now existing on the northeast quarter of said section twenty-one, (21.) in said township number twenty-nine, (29,) so as fully to supply with water the canal leading from said dam to the mills, which canal they are to have the right forever to maintain; and the right to enter upon the land and lots through which the said canal passes to view and upon the same at all reasonable times.

Also the following described tract of land, to wit: commencing at the northeasterly corner of lot number seven, (7,) in block number fifty-six, (56,) in the original town of Freeport, now city of Freeport; running thence southerly on the easterly line of said lot number seven, (7,) thirty-five feet; thence southwesterly on a line parallel with Bridge street, twenty feet; thence northwestwardly parallel with Mechanic street, thirty five feet, to Bridge street; thence northeasterly
61 along Bridge street, twenty feet, to place of beginning; reserving from said last described tract free passage, six feet wide, over and through said last described tract. Also lots numbered five (5) and six, (6,) in said block number fifty-six, (56,) in said original town of Freeport. Also the easterly one-half of lot two, (2,) and all of lots number three, (3,) four, (4,) and five, (5,) in block number fifty-one, (51,) in said original town of Freeport.

Also the following described tract of land lying and being in the county of Jo Daviess, and State of Illinois, to wit: the south half of the northeast quarter of section number nine, (9,) in township number

twenty-seven (27) north, of range number five (5) east, of the fourth principal meridian.

Also the following described tracts of land lying and being in the county of Carroll and State of Illinois, to wit: the east half of the northeast quarter of section eight, (8,) and the west half of the northwest quarter of section nine, (9,) in township twenty-five, (25) north, of range four (4) east, of the fourth (4th) principal meridian.

Deeds of conveyance for the above-described lands have been this day executed by John K. Brewster and Emily L. Brewster, his wife, to the said John A. Clark and Daniel S. Brewster, the more effectually to carry out the interests and purposes of the annexed deed of assignment.

62 *List of notes belonging to J. K. Brewster and embraced in assignment.*

Date.	Name of maker.	Name of payee.	When due.	Amount	Indorsement.
1857, July 17	Jacob Wolf	John K. Brewster	90 days	$5 22	
1852, June 2	John Wrathell	"	1 "	1 00	
1857, July 25	Chas. Wilson	"	60 "	11 86	
" Aug. 1	D. C. Williams	"	60 "	30 38	
" July 2	James Wilson	"	Oct. 1, 1857	702 63	
1853, Apr. 20	James Williams	"	60 days	7 86	
1856, Sept. 8	J. M. Windus	"	"	14 76	
" Jan'y 2	John Wilson	J. K. Brewster & Co.	1 "	142 99	$80 00
1857, Jan. 1	Lewis Gibber	John K. Brewster	"	77 40	
1855, Aug. 11	" "	"	"	99 85	104 00
	Stephenson county orders on treasury			103 00	
1857, Jan 15	E. H. Hinkley	"	30 days	15 00	
" Oct. 21	Evans Hunter	"	1 "	20 90	
" May 9	W. O. Draton	"	1 "	37 05	
" " 20	A. M. Draton	"	1 "	67 38	
" " 8	James Van Pelt	"	1 "	32 35	
" Oct. 10	Bernard Tull	"	1 "	8 76	
1854, Sept 1	Henry Lauds	"	1 "	4 25	
1857, May 16	Henry Mook	"	14 "	4 50	
" April 8	Alva D Smith	"	1 "	50 00	
" M'ch 11	Jno. Mook	"	"	15 21	
" Apr. 22	Jno. Elwood	"	June 1, 1857	30 64	
1855, M'ch 12	Jonathan Hay	"	1 day	52 80	
1857, Aug. 6	Jane B Wilson	"	60 "	20 85	
" Feb. 2	Benj Wilber	"	1 "	16 01	
" Sept. 24	N. S. Willis	"	30 "	20 51	
1851, Feb. 25	Wm. Van Winkle	"	1 "	116 51	
" Sept 21	Giles Van Burkhie	"	30 "	30 95	
1854, Feb. 25	G. Falnen	"	30 "	3 00	
1852, June 26	Daniel Vacree	"	20 "	4 75	
1856, M'ch 17	Jonathan Tiffeny	"	1 "	10 68	
1857, M ch 20	Patrick J. Taruance	"	1 "	70 41	40 00
63					
1857, M'ch 23	Peter Drissas	"	1 "	6 22	
1857, Jan. 1	Oliver P. Shaddle	"	1 "	22 00	
1857, Sept. 3	S. Slaight	"	30 "	33 87	30 00
" " 28	Josiah Stedman	"	"	9 60	
" M'ch 7	S. L. Shaddle	"	1 "	27 22	20 30

List of notes belonging to J. K. Brewster—Continued.

Date.	Name of maker.	Name of payee.	When due	Amount.	Indorsement.
1857, Feb. 19	Joseph D. South	John K. Brewster	1 day	$48 55	$37 00
1855, Jan. 17	James Stevens	" "	1 "	28 10	25 00
1856, Dec. 18	Ezra Strong	" "	1 "	21 76	12 00
1852, Jan. 1	Milton Saterlee	" "	4 months.	37 46	2 00
1856, Dec. 31	Maiton Schoppel	" "	1 day	15 00	6 00
Dec.	Jno. W. Shaffer	" "	12 shares R. A. M. R. R. stock.	1,200 00	1,000 00
1854, Sept. 2	L. G. Reed	" "	1 year	10 35	
" Mch 16	Sherman Rogers	" "	1 day	88	
1857, July 16	S Reese	" "	1 "	8 12	
" Feb. 16	John Rousau	" "	"	24 10	15 00
Dec.	W. S. Rust	" "	"	6 63	
1857, Nov. 15	"	" "	75 "	29 15	20 00
1852, Mar. 28	"	" "	June 1, 1852	6 63	1 92
1857, Sept. 24	D. W. Parsons	" "	30 days	127 18	97 00
1857, Oct. 10	Sam'l Perricoff	" "	1 day	10 95	7 00
1854, June 10	J. J. Pelett	" "	1 "	5 00	
1857, Sept 26	Jacob Parker	" "	30 "	8 01	
1854, May 25	Richard Patterson	" "	90 "	285 80	
1853, Apr. 5	Michael Nayle	" "	1 "	2 70	
1850, Sept 12	John McNamara	" "	Due	75	
1857, June 25	Edmund Mallarkey, 2d	" "	1 day	20 85	
1856, Jan. 24	H Mayers	" "	1 "	23 19	
1851, Oct. 6	A. E Mallarkey	" "	2 weeks	3 35	
1853, July 30	Calube McGhee	" "	1 day	20 67	
1857, Sept 22	Peter Mullen	" "	30 "	71 50	
1857, July 6	Jacob Miller	" "	Sept. 1, 1857	26 02	
" Mar. 28	Philip C. Morgan	" "	1 day	23 04	15 00
1855, Jan. 22	Lighthart, Knapp & Co.	" "	10 "	99 70	
64					
1857, Sept. 5	Orrin Lindman	" "	30 days	7 04	
" July 4	Levi Lucas	" "	1 "	22 80	
" " 20	Stephen Kendall	" "	90 "	7 06	3 00
" " 17	L. M. Kratzer	" "	Sept 1, 1857	9 26	
" Mar. 21	Solomon Kailey	" "	1 day	9 88	8 00
" June 27	Chas. Koeu	" "	1 "	44 11	1 25
1856, Dec. 8	" "	" "	1 "	73 75	
1857, Sept. 24	Hiram Knight	" "	1 "	23 00	10 00
" " 22	Wm. Ingram	" "	30 "	13 52	
1855, Jan. 22	Abraham Johnson	" "	1 "	49 79	25 00
1854, Sept. 21	E. B. Hibbard	" "	60 "	236 09	239 67
1855, Jan. 26	Harvey Hartson	" "	1 "	1 43	
1857, Aug. 28	Philip Hannon	" "	1 "	1 38	
1855, Dec. 21	Emanuel Hollman	J. K. Brewster & Co.	1 "	24 67	
1852, Oct 20	Jno. Hood	J. K. Brewster	60 "	18 00	
1857, June 15	O. P. Hopkins	" "	1 "	32 15	
" Feb. 28	John Haughey	" "	1 "	8 29	
1857, Oct. 3	Palmek Diblin	" "	1 "	32 45	
1857, June 22	Lewis Goodrich	" "	1 "	39 97	
1854, Feb. 16	Geo Gould	" "	30 "	3 25	
1857, Jan. 13	Jno Gibler	" "	1 "	26 00	
1854, Aug. 29	W. H. Ganatt	" "	"	5 29	
1857, Oct. 2	Valentine Gilman	" "	1 "	5 45	
" July 4	S. B Gates	" "	3 months.	15 71	
" June 27	Jas Gross	" "	1 day	85 25	35 00

List of notes belonging to J. K. Brewster—Continued.

Date.	Name of maker.	Name of payee.	When due	Amount.	Indorsement.
1856, Feb. 27	C. P. Fisher, M. D	J. K. Brewster	1 day	$9 64	
1857, Apr 27	Cornelius Fesley	" "	"	5 22	
1857, Sept. 22	" "	" "	30 "	36 51	
1854, July 11	Josiah Fowler	" "	1 "	3 60	
1857, Mar. 21	Fred. Fowler	" "	1 "	34 28	$20 00
" Feb. 27	Jno. Fritzell	" "	"	47 63	20 00
1856, Dec. 1	R. J. Edmonds	" "	1 "	94 25	
1856, Nov. 29	James Elliott	" "	60 "	20 00	
1857, May 12	Amos G. Ells	" "	1 year	100 00	
65					
1853, Jan. 11	M. G. Edson	" "	1 day	16 41	
1857, Sept. 28	Joseph S. Dickey	" "	30 "	13 38	
" May 7	O. S. Duncan	" "	1 "	42 49	
1857, July 30	Joseph Doan	" "	1 mo.	3 92	
" July 20	F. M. De Amint	" "	1 day	14 16	10 00
" Feb. 28	Geo. Duffield	" "	60 days	31 09	
" Aug. 12	Wm. H. Davis	" "	30 "	33 66	18 00
" April 2	Jno. De Amint	" "	1 "	463 00	42 79
" Sept. 15	Asa Casey	" "	30 "	18 54	
" " 5	R. H Cripper	" "	"	11 97	
1851, Oct. 8	Lorin Chapin	" "	Due	1 10	
1857, Oct. 5	Mat. Cannedy	" "	Due	3 65	
1855, Jan. 1	Asa Casey	" "	1 day	9 68	
1857, Feb. 21	" "	J. W. Casey	Nov. 1, 1857	15 00	
" Sept. 24	R. L Chitty	J. K. Brewster	30 days	7 50	
" Jan. 3	Daniel Resey	" "	"	4 00	
1856, Jan. 2	Alson Bronnell	" "	"	44 67	
1855, June 26	Louisa Beechard	" "	"	92 61	11 32
1853, July 23	B Barber	J. K. Brewster & Co.	"	11 25	
1857, M'ch 2	Morris K. Beecher	J. K. Brewster	"	28 87	
1853, April 16	F. S. Bowen	" "	"	6 30	2 00
1852, June 26	Wm. A. Baker	" "	10 "	80	
1857, Mar. 10	Ben. Brewer	" "	1 "	15 55	
" " 6	Carl Buss	" "	"	3 50	
" July 4	N. Blackaman	" "	30 "	16 66	
1857, M'ch 18	Joseph Belrail	" "	1 day	17 27	
" Oct. 3	H. O. Buckley	" "	"	5 00	
" Aug. 26	Jno. Brown	" "	"	85 26	
" July 22	J. M. Brewster	" "	"	3,000 00	
1856, M'ch 4	Jona Brown	" "	"	13 61	
" M'ch 20	Giles L. Taylor	J. K. Brewster & Co.	"	4 95	
1854, " 17	B. Stowell	" "	"	25 30	
1855, Sept. 29	Geo. Shumnar	" "	"	17 61	
1855, Aug. 14	L. D. Emmons	" "	"	21 30	
66					
1855, Nov. 5	Jno. Bentley	" "	1st Jan. '55	38 42	28 00
1856, Nov 22	Wm. M. Farley	" "	1st Apr. '56	10 00	
1856, June 19	Everett & Tull	" "	60 days	43 17	10 00
" Aug 30	Oliver P. Winters	N. Willis	12 mo.	57 00	40 00
1857, May 15	James Wilson	C. A. Sharts	Due	7 00	
1855, May 5	G. H. Watson	Silas B. Kibby	6 mo.	10 00	
1851, Apr. 1	D. Forbes	L. L. Potter	20 days	36 00	
1856, Nov. 1	C N. Rockwell	E. T. Macorubry	1st May, '57	45 00	34 00
" May 15	Edward Murphrey	Jno. Di Amist	4 mo.	8 00	

List of notes belonging to J. K. Brewster—Continued.

Date.	Name of maker.	Name of payee.	When due.	Amount	Indorsement.
1855, Dec. 3	J. H. Clamer, Jos. McConnell.	J. S. Job	4 mo.	$24 00	$19 50
1849, June 7	Thos. Hutchinson	O. W. Brewster	1 day	1 63	
1856, Apr. 24	Geo. Fisher	H. Kilper	6 mo.	50 00	32 00
1856, May 30	E. Casey	Jno. De Amiet	60 days	7 00	7 00
1856, Dec. 29	S. D. Clark	H. G. Grafton	6 mo.	10 00	
1857, Oct. 8	L. Chapin	J. K. Brewster	Due	1 10	
1845, Nov. 3	B. P. Belknap	Dan'l L. Brewster	1 ton hay.		
1857, Jan. 15	Orsamnus Bowen, O. L. Mitchel.	C. H. Chitty	Sept. 1, '57	8 11	
1857, Jan. 5	Lorenzo Lee	J. K. Brewster	60 days	97 73	
1856, May 10	H. A. Jackson	" "	July 1,1857	*425 87	
" " "	"	" "	July 1,1858	*225 00	
" Nov. 8	C. C. Shuler	S. L. Casey	Nov.8,1857	*295 00	
" " "	Jesse Little	" "	" "	*280 00	
1857, Mar. 18	Jno. Bechel	J. K. Brewster	Oct.14,1838	*130 00	
" " "	"	" "	Oct.14,1839	*120 00	
" " "	"	" "	" 1860	*110 00	
1854, Apr. 1	L. H. Cutter	Jno. S. Emumet	6 mo's	82 57	45 00
1857, July 26	H. S. Gray	J. K. Brewster	90 days	†15 43	
" May 25	Jacob Cinnamon	" "	3 mo's	†100 00	
" July 20	Wm. Gimsud	" "	60 days	†18 57	
" July 24	W. S. Burgess	" "	30 "	†37 66	
" " "	Rob't Bell	" "	90 "	†34 43	
67					
1857, July 27	Chas. Snyder	" "	90 "	†36 11	
" " "	Jacob Rice	" "	90 "	†47 09	
" " 25	Geo. McGilligan	" "	90 "	†87 08	
" " 24	Jno. Milliken	" "	60 "	†48 37	
" " 23	A. O. Cutter	" "	60 "	†57 85	
" " 21	Wm. H. Ells	" "	1 Oct. '57	†46 46	
" " 25	Christopher Bennet	" "	2 mo's	†52 60	
" " "	H. G. Umphrey	" "	60 days	†23 52	
1856, Jan. 3	N. Williams	" "	1 day	92 66	51 66
1857, July 28	"	" "	4 mo's	‡28 70	
1856, Dec. 8	Alvin Fuller	W. Ayer	1 year	‡20 00	
1857, Oct. 1	J. Wilfong	J. K. Brewster	30 days	‡47 22	
" " 17	Robinson Beard	" "	1 "	‡36 42	
" Sept 21	Solomon Straw	" "	1 "	‡ 5 73	
" Apr. 23	"	" "	1 "	‡36 12	
" Sept. 24	Geo. Stubbs	" "	1 "	‡46 23	
" May 5	Philip Fowler	" "	30 "	‡39 59	
1851, Sept. 22	Patrick Flinn	" "	30 "	‡78 23	
" Mar. 12	Jno. Burns	" "	1 "	‡30 71	
" Sept. 30	Philip Hogan	" "	1 "	‡23 76	
" Oct. 2	Solomon Straw	" "	1 "	‡42 52	
" Sept. 22	James Robb	" "	30 "	‡37 38	
" Sept. 30	Dunnes Moker	" "	1 "	‡29 28	
" Sept. 22	Edmund Mallarkey	" "	30 "	‡27 29	
" Oct. 19	Rufus Byington	" "	Jan 1st,'59	‡59 68	
" Oct. 10	Jno. Rumkoff	" "	1 day	‡34 09	
" Oct. 2	Christel Rasensted	" "	1 day	‡25 31	
1856, Nov. 18	L. Montague	" "	1 year	‡30 00	

* Left with A. Albretern as collateral to secure the pay'mt to him of a note for $1,268 71.

† These notes deposited with J. M. Bailey to secure a note for $561, dated July 28, 1857, due 30 days after date.

‡ These notes are left as collateral to secure the payment to James Mitchel & Co. of note for $889 67.

List of notes belonging to J. K. Brewster—Continued.

Date.	Name of maker.	Name of payee.	When due.	Amount.	Endorsement.
1857, June 9	L. Montague	J. K. Brewster	1 y'r	*$184 46	
" " 5	J. B. Veile	" "	1 day	*48 58	
" " 23	Rachel Lee	" "	1 "	*63 35	
" M'ch 5	Alex. Jay	" "	"	*53 64	
" Apr. 3	Hervey Pope	" "	"	*168 47	
" Feb. 17	Jane Plauer	" "	"	*107 22	
68					
1856, Aug. 18	O. E. Stearns	J. A. Daniels	1 year	*240 00	
" " "	"	" "	"	*200 00	
1857, Feb. 3	H. S. Bengals	J. K. Brewster	Dec. 1, '57	*384 13	
1857, Apr. 13	John Pile	" "	1 day	*100 00	
1857, Apr. 1	Rowell Coleby	" "	"	*201 18	
1857, May 9	H. E. Anderson	" "	Jan. 1, '58	*200 63	
1857, " 8	O. H. Hazzard	" "	6 mo's	*500 00	
1855, June 27	Wau Lamb	" "	1 day	†55 36	$15 00
1855, Apr. 18	Sam'l Milliken	" "	"	†47 14	
" June 12	S. O. Perhard	W. H. Hollenbrick	30 days	†105 00	20 00
1853, Dec. 5	L. F. Elger	" "	30 days	†7 00	5 00
1856, Feb. 14	"	" "	"	†4 50	
1852, Sept. 6	Perrin Parmelee	" "	1 day	†3 18	
1856, M'ch 14	Jas. Miller	" "	"	†46 93	
1856, Feb. 26	Thos. Wilson	" "	"	†12 47	
1855, June 27	Wm. Lamb	" "	"	†142 03	6 50

* Left with John A. Clark as collateral to secure the payment of two notes for $1,000 each, upon which he is security.

† Left in S. Lankey's hands for collection.

69 The books of account and accounts of John K. Brewster; the books of account and accounts of John K. Brewster & Company, which company was composed of John K. Brewster, John W. Shaffer, and Lewis F. Burrell; and books of account and accounts of John K. Brewster & Company, said company composed of John R. Brewster and John W. Shaffer, including ledgers, day books, and cash books.

Ten shares of stock in the Freeport Manufacturing Company.

Sixteen shares of stock in the Freeport Gas-light and Coke Company.

Twenty-eight shares of stock in the Racine and Mississippi Railroad Company.

Two horses, 1 wagon, one top buggy, 23 head of neat cattle, 1 Manny reaper, 3 ploughs, 1 harrow, 1 cutting-box, 1 farming mill, 3 sleds, ten tons of hay, 1 set of harness, about four hundred bushels of oats, about 1,000 bushels of wheat in Winslow mills.

Schedule "B."

One note due James Mitchell & Co., dated July 17, 1856, due in thirty days, for one thousand dollars, upon which John W. Clark is security. One note due James Mitchell & Co., dated October 14, 1856, due October 14, 1857, upon which John A. Clark, A. C. Hunt, S. L. Carey, and Hemanway are securities, for the sum of thirty-five hundred and twenty dollars, with ten per cent. interest.

One note due James Mitchell & Co., dated May 27, 1857, for one thousand dollars, upon which John A. Clark is security, due thirty days after date, with ten per cent. interest after due.

70 One note due James Mitchell & Co., dated May 27, 1857, for one thousand dollars, upon which John A. Clark is security, due thirty days after date, with ten per cent. interest after due.

The sum of three hundred and nine dollars, due to James Mitchell & Co. from Clark & Brewster, on their note dated May 8th, 1854, and due June 23, 1854, the said firm of Clark & Brewster having been composed of John A. Clark and John K. Brewster.

One note due James Mitchell & Co., dated June 2d, 1857, for three hundred and twelve dollars, due 30 days after date, upon which Joseph M. Brewster is security. One note due James Mitchell & Co., dated 30th May, 1857, for one thousand dollars, due 30 days after date, upon which Joseph M. Brewster is security.

One note due De Forrest, Hyde & Co., for about one hundred and forty dollars, upon which A. T. Green is security.

One note due James Brown, dated September 1, 1857, due 60 days after date, for six hundred and sixty-six $\frac{62}{100}$ dollars, upon which A. C. Hunt is security.

A part of one note, executed by John K. Brewster and Owen E. Stearns to one S. G. Godfrey, for fifteen hundred dollars, to wit: such part of said note as said Owen E. Stearns may be liable to pay, after deducting the amount which said Owen E. Stearns is indebted, by note or otherwise, to said John K. Brewster.

An account due to William W. Kennison, of one hundred and eighty-five dollars and forty cents.

One note due Joseph Degon, dated October 1st, 1857, due one year, for three hundred dollars.

An account due to the estate of Peter D. Fisher, deceased, from said John K. Brewster, as administrator of said estate, amounting to about five hundred dollars.

71 *Schedule "C."*

One note to T. A. Simmons & Co., of Boston, Massachusetts.
" " S. B. Chittenden & Co., of New York city.
" " Kimball & Robinson, Boston, Mass.
" " Stewart & Baird, of Johnston, New York.
" " Bigelow, Ball & Knight, of Boston, Mass.
" " Converse, Harding & Co., Boston, Mass.
" " Austin, Summer & Co., Boston, Mass.
" " Skinner, Kent & Co., Boston, Mass.

One or more notes to Bowen, McNamee & Co., New York city.
" " Danna, Farrar & Hyde, Boston, Mass.
" " Lee, Case & Co., New York city.
" " Callenden, Rogers & Co., Boston, Mass.
" " Pierce, Howe & Co., Boston, Mass.

Schedule "D."

One note due		Ross Babcock, bal. due about	$162 17
"	"	Am. J. Pollock	300 00
"	"	Dennis Flynn	150 00
"	"	Isaiah Johnson	100 00
"	"	Warner Wells	100 00
"	"	Carson Wicks	250 00
"	"	James Alexander	85 00
"	"	Nelson Wait	50 00
"	"	Loyal L. Munn	1,000 00
"	"	Julius Bastuss	600 00
"	"	Rev. C. C. Best	500 00
"	"	Nelson Hubburt	100 00
"	"	Adm. of estate of Chauncey Stebbins	500 00
"	"	Wm. H. Eells	40 00
"	"	Everitt Clark & Co.	150 00
"	"	A. Ludlow	100 00
		Amount due N. Corwith & Co.	400 00
72		One note due E. Obechaine	700 00
		Amount due Taylor & Co.	1,500 00
65 notes payable to Joseph Norris, signed by John K. Brewster, Joseph M. Brewster, Daniel S. Brewster, and O. W. Brewster, for $100 each, dated May 18th, 1857, and due, the first, on November 18th, 1857, and respectively, at intervals of 30 days thereafter, amounting in all to			6,500 00
All such amounts as may be found due to, upon settlement with, the following named persons, for services rendered as clerks, book-keepers, and laborers, or for material or labor furnished, is performed in the erection of the hotel building, or otherwise, for said John K. Brewster, to wit: Martin Kimball, Charles H. Little, Patrick Quinn, James Hogan, Patrick Tobin, John Glover, Durnard Shockly, Thomas Collmore, John Wolfinger, and Simon Austin—			
An amount due		Rollin M. Witt, about	65 00
"	"	John Junsaun, "	68 65
"	"	Mrs. Wahler	40 00
"	"	Rudy & Bowman, Lancaster county, Pennsylvania, about	300 00

Recorded Nov. 5, 1857, at 9¾ h. a. m.

L. W. GUITEAU, *Clerk.*

73 OFFICE OF THE CLERK OF CIRCUIT COURT.

STATE OF ILLINOIS,
Stephenson County, ss:

I, Luther W. Guiteau, clerk of circuit court in and for said county, certify that the foregoing deed of assignment was filed for record this 5th day of November, A. D. 1857, at 9¾ o'clock, and recorded in book 26 of deeds, pages 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, and examined.

L. W. GUITEAU, *Clerk.*

Exhibit "B."

$3,000. FREEPORT, *October 20th*, 1857.

Received of John K. Brewster, in purchase of his interest in the firm of Brewster Brothers, three thousand dollars, which I am to pay on said Jno. K. Brewster's notes to Joseph Norris, given in payment for "Norris farm;" the first of which said notes comes due and is payable November the eighteenth, A. D. one thousand eight hundred and sixty, (1860,) and the residue in equal payments monthly, of one hundred dollars each, until said three thousand dollars is paid.

(Signed) J. M. BREWSTER.

74 *Exhibit "C."*

19	Mrs. Strawbridge, (settled in part)	$501 96
22	Jno. De Armit	131 32
24	Jacob Walkey	50 00
27	Milton M. Moshier	8 72
28	Z. S. Kellogg	2 40
59	Jacob Hine	3 06
75	J. W. Shaffer	20 80
76	Benj. Noble	102 86
77	James W. Barber	15 90
77	Lyon & Baker	19 37
81	James Mitchell, (settled)	206 14
83	Samuel McGan	3 62
84	Judson Farm	6 00
87	Wood & Pine, (settled)	444 36
87	Martin	17 70
87	Alvah Smith	3 97×
88	Isabella Bunkson	32 41
88	Almira Harris	1 50
88	Hersey Farm	4 80
89	Jno. McMannus	31 25
"	Dr. C. P. Fisher	2 05
"	Raymond & Shull	6 72
"	David B. Gillett	5 31
"	Hubbard Grans, "guardian"	44 00
"	Michael Smith	102 00×

90	Jno. Reitzell	$2 67		
"	Martin Van Pelt	25 33		
"	Miles O. Brien	5 73		
91	Peter Billon	11 42×		
91	Thos. Gordon	8 70×		
91	Richard Patterson	35 91		
	91 Leander Brown	3 88		
75	92 Mrs. L. W. Guiteau	21 06		
	98 O. H. Crews	27 60×		
99	Mrs. Springsteen	16 69		
100	Cornelius V. Bridge	5 00		
106	Geo. Nuss	6 23		
106	Jno. Mellows	3 07		
119	Samuel Lankey	59 21		
120	Levi Davenport	42 25		
124	Edward Everett	169 97		
145	Wesley Carey	6 00		
				$2,219 14
147	Rev. J. E. Carey	16 42		
148	Smith Giddings	8 25		
157	Mrs. Jane Platner	8 55		
159	Chas. W. Perkins	7 61		
160	Jno. Bently	77 95		
164	Jacob C. Welliver	44 08		
165	Peter Breck	2 24		
166	D. C. Feeley	19 06		
167	Samuel Belding	12 23		
168	Rev. A. H. Lackey	41 42		
172	Jno. Burrell	9 25		
173	B. P. Belknap	33 65		
173	Seneca Hauley	1 70		
176	A. D. Burnam	10 88		
176	Est D. L. Umphrey	81 13		
179	W. H. Mitchell	3 50		
181	Oscar Taylor	45 23		
181	Jno. A. Clark	6 41		
183	H. McLanehan	36 62		
189	Abel Smith	130 37		
190	James Patterson	12 00		
190	Jno. Collman	30		
	191 D. C. Gaylord, (settled)	104 00		
76	197 Sam'l Lankey	1 40		
	199 H. B. Ketchum	4 00		
202	Cha's Rust	9 71		
203	Joseph Carey	2 57		
207	Sam'l Sapp	43 82		
208	James Coxon	34 31		
213	Jacob Berry, jr	6 03		
216	Q. P. McCool	10 48		

220	John Boyenton	$16	27	
221	H. K. Bnibacher	8	03	
221	Richard Barron	15	35	
221	Ralph Hilderbrant	4	50	
231	Mrs. Caroline Rochler	32	71	
234	L. Ocobuck	10	00	
235	Hubbard Graves	14	33	
235	Jeremiah Patterson	34	24	
236	Jno. Wright	3	89	
273	Richard Hunt	26	76	
238	Fred. Hofmeister	5	13	
241	Derillia Bolton	53	26	
241	W. H. Ecels	11	88	
				3,279 66
241	P. B. Ellis	11	56	
245	Henry Dale	5	03	
247	Judson & McClure	40	81	
248	H. J. Stickney	8	78	
249	S. M. Dickey	6	00	
249	Samuel Hutchinson	9	50	
251	Philip C. Morgan	10	70	
262	Cha's S. Bagg	116	31	
266	David Barrett	10	00	
268	Jno. B. Angle	26	73	
270	Cha's Rowell	173	20	
	274 W. T. McCool	63	27	
77	278 Patrick Flinn	6	98	
	278 Wm. Nicholas	22	07	
279	James Van De Vender	15	26	
279	Jacob Becker, No. 6	15	66	
280	Alonzo Lusk	1	60	
285	Jos. C. Barber	67	11	
286	Philip Wells	96	83	
289	Austin Case	42	94	
289	J. W. Gamble	12	08	
291	Barney Duffy	17	17	
292	Jno. Wilson	58	49	
292	Benj. Lapp	26	65	
293	A. Mengedorth		73	
294	S. J. Dau & Bro	40	00	
295	W. S. Berry	21	36	
295	Sam'l Berry	4	50	
297	Martha Mitchell	21	53	
299	Jehu Riles	26	16	
303	Solon J. Beaman, (offset)	198	62	
305	E. H. Hyde	12	81	
306	B. D. McComber		66	
306	Absolam McDaniel	1	38	
311	Miss Lucy W. Bankson	413	90	

	Miss Ada Bankson	$87 25
312	F. R. Jewell	6 45
313	Tho's McCauley, (offset)	103 83
313	Cha's Bradley	19 07
314	H. G. Umphrey	28 47
314	Morgan Van Martin	38 66
315	Jno. Bradford	39 00
318	Jesse Wells	1 37
320	Jno. H. Flannegan	21 34
	321 O. P. Shaddle	8 25
87	323 Daniel Martin	12 04
	326 W'm Chilton	12 06
328	Jno. W. Barnes	90
328	Wm. Yaeger	1 95
330	C. O. Judson, coll. ac	16 58
330	Rob't McAffee	21 03
331	Rosanna Stebbins	43 43
331	W'm Strawbridge	22 63
332	Michael Stinson	13 02
332	Jno. Fritzell	8 36
335	Owen Berry	2 50
337	Benj. Taft	6 46
338	Jas. O. P. Burnside	60
339	Sam'l Buck	16 24
340	Alfred Bloss	7 05
343	W. Wright	8 48
344	W. Judson, coll. ac	86 92×
345	Rob't Barber	13 89×
346	Harkness Van Winkle	4 74
346	James Johnson	12 75
347	Nelson Hulburt (offset)	33 01
349	G. W. Hull	10 56
351	Wm. Wagner	1 74
352	J. G. Beede	6 97
353	Leph'n Young	50 00
354	Wm. Irvine	12 81
354	S. D. Clark, (offset)	41 15
354	Deenwiddie & Dexter	131 00×
355	J. J. Lamb	5 48
356	Rev. J. N. Rowell	23 33
356	Jos. R. Berry	12 45
357	Jno. Rennekoff	12 71
	359 Nathaniel Rathburn	19 11
79	360 S. A. Williams	30 71
	362 Geo. Lester	14 00
364	Conrad Epley	34 73
364	Jno. Fisher	25 55

366	Henry Pope	$10 22	
366	Lidell	1 15	
368	Jos. Norris, (offset.)	101 71	
369	Conrad Van Brocklin	2 70	
			$6,142 75
370	Wm. Lamb	35 53	
371	David C. Piles	3 50	
372	L. D. Van Metre	9 20	
372	John Deeds	11 45	
373	Frederick Eggert	12 09	
374	Edward L. Stone	6 00	
375	Hiram Kniss	82 17	
376	Mrs. Campbell	10 19	
376	Rob't Bellen	45 84	
377	Barber & Preston	2 50	
378	Martin P. Sweet	82 37	
381	Jonathan E. Clark	12 47	
396	Frederick Baker	14 85	
401	Wm. Lills	44 89	
411	A. B. Ames	25 00	
412	Remer Rremer	15 25	
412	H. G. Grattan	4 50	
413	Calvin Hoffman	7 28	
413	Jno. Botsfield	9 22	
414	Jacob Pennekoff	1 25	
415	M. V. B. Reber	7 49	
418	G. L. Springston	17 72	
422	Matthias Zimmerman	14 15	
423	Chancellor Martin	4 23	
	425 Ira B. Job	3 75	
80	426 W. W. Grant	12 30	
	427 Peter Knife	1 00	
428	B. F. Thomas	2 42	
430	Daniel Rathburn	28 02	
431	Samuel Onan	30 58	
432	D. H. Setchell	3 59	
443	Andrew Fay	4 23	
444	Thos. J. Bunker	8 75	
444	Chas. McComber	17 70	
446	John Saul	25 93	
446	Mrs. Susan Potter	13 33	
450	Wm. H. Hallenbeck	36 50	
450	W. & H. Cross	29 25	
450	David Love	1 00	
451	C. E. Welty	2 25	
452	Thos. Murphy	88	
			6,864 37
452	Edward Pratt	10 22	
452	Geo. McGilligan	7 00	
454	Isaac Gaylord	35 32	

455	Carl Walker	$7 47	
453	Jno. R. Chambers	39 25	
456	Andrew Hinds	9 38	
457	Franklin Weang	18 65	
458	Elizabeth Hull	2 14	
459	P. Cady	6 18	
459	Chas. C. Wilson	1 75	
461	Jno. Reeder	11 50	
462	Louis Fritzell	2 65	
462	John Mullackey	1 38	
463	Martin Boutley	1 92	
464	Mrs. Susanna Oaks	1 34	
464	Aaron Cragin	14 00	
	466 Conrad Best	19 54	
81	467 Charles Betts	4 14	
	468 Wm. Lawber	1 19	
469	Rob't Notley	14 30	
472	Joseph Ross	1 25	
472	J. B. McElheny	1 75	
472	Jacob Clay	7 65	
474	Wm. Peters	10 53	
475	Sam'l Otto	2 00	
477	Jno. Stout	6 66	
478	Geo. C. Leslie	46 02	
479	Malon E. Snyder	115 25	
480	C. H. Chitty	4 29	
480	J. Wendell	1 50	
482	Jos. D. South	1 75	
483	Wm. Welch	2 36	
484	Jno. Q. Hutchinson	8 42	
489	W. P. Naramore	10 75	
495	Mrs. J. O. Taylor	1 25	
495	Lorenzo Snyder	1 00	
496	E. Taft	31 88	
498	Edward Eells	16 55	
500	James C. Hulsey, (offset)	168 53	
508	Mrs. Margaret Van Dyke	21 72	
517	" Nancy " "	57 60	
517	Jos. Belrail	4 60	
522	J. W. McKee	13 95	
523	Jno. Roonan	3 98	
			7,614 93
523	Doct. Reigart	2 43	
525	Benj. Shackley, (offset)	7 57	
526	Wm. McLane	69 15	
527	Miss Cynthia Van Winkle	18 61	
529	Jno. Y. Haughey	6 83	
	529 Walter Lindeman	2 83	
82	529 Daniel Knyder	1 31	
	555 Wm. Campbell	2 13	

99	Susan J. Kellogg	$29 55	
600	David Bunell	3 13	
602	Doct. J. B. Williams	16 83	
604	Wm. G. Strong	1 76	
605	Michael Cochlin	4 00	
605	Rev. M. L. Reed	1 80	
605	Chas. E. Berry	11 31	
607	Fred. Veitmeir	2 15	
607	Conrad Wahrenberger	2 26	
607	Geo. Hyde	2 00	
607	Mrs. D. L. Umphrey	10 55	
609	Newton Mallory	1 22	
610	Thos. Fleming	2 25	
610	Michael Mannon	4 13	
611	Mary C. Pennekoff	3 88	
611	Louisa Pennekoff	2 38	
612	Winshop Menell	5 00	
			$8,960 95

86 *Exhibit "D."*

An account of money received by John A. Clark and Daniel S. Brewster, assignees of John K. Brewster, under said assignment:

From whom received.	On what account.	Amount.	Total.
Cornelius Ferly	2 Notes	$42 00	
Joseph Stedman	Note	9 70	
Giles Van Brocklin	"	31 00	
Joseph Gross	"	10 00	
R. Crippen	"	5 00	
Jeremiah Brubacker	On account	8 00	
R. L. Chilty	Note	7 53	
William Wright	Account	8 48	
Jos McKibber	"	12 37	
S. Kindell	Note	4 06	
Thomas Hathaway	Account	7 00	
M. Zimmerman	"	14 15	
	Interest of the last ac.	60	
H. S. Benkly	On note	5 00	
J. R. Shelley	Account	3 00	
John Chambers	"	10 00	
R. H. Cripper	On note	6 90	
P. H. Kaufman	Account	12 42	
Nathan S. Willis	Note	20 50	
Jam. B. Wilson	"	21 45	
Henry Dale	Account	5 00	
			$224 16
H. Vanwinkle	"	4 74	
A. A. Wright	"	3 25	
W. Carey	"	5 00	
E. Carey	Interestion note	70	
Isabella McKibber	Account	80	
S. B. Gates	Note	16 24	
87 C. L. Bruce	Account	1 23	
Thos. Hathaway	"	1 13	
J. W. Barras	"	2 36	

Exhibit "D"—Continued.

From whom received.	On what account.	Amount.	Total.
T. D. Bulkley	Account	$3 30	
N. Nicholas	"	6 60	
W. Shudler	"	78	
Winthrop Frenille	"	5 00	
W. Ehlebracht	"	1 69	
J. J. Lamb	Note	5 48	
Conrad Best	Account	14 00	
Fred. Eggert	"	12 09	
O. P. Duncan	Note	10 00	
J. S. Dukey	"	13 47	
John Penncoff	Account	6 25	
W. J. Johnson	"	10 91	
George Lester	"	5 00	
Charles Walker	"	7 47	
H. Springer	"	3 00	
Ralph Hildebrand	"	4 50	
Geo. Howe	"	6 78	
			$375 93
James Vandeventer	"	15 26	
Edward Eells	"	16 55	
V. Gilman	Note	5 43	
M. Schopper	"	10 40	
C. Van Brockler	Account	2 70	
S. Pennekoff	Note	3 95	
Alonzo Luck	Account	1 60	
John Wright		3 89	
W. O. Denton	Note	5 00	
W. Fargu	Account	1 95	
Christ. Rudell	"	1 35	
Sam'l Otto		2 00	
Jacob Miller		13 00	
88 S. Rees	Note	8 50	
John J. Hutchinson	Account	8 42	
H. J. Stickney	"	8 75	
E. B. Hilliard	Note	5 00	
John Boynton	Account	16 27	
Jno Chambers	"	8 00	
Daniel Keyder	"	1 31	
R. Bellows		45 80	
M. Sapp		19 00	
Joseph Carey		1 50	
County orders		103 00	
James W. Barber	Account	15 90	
Alfred Bloss		5 00	
Jacob Miller		13 97	

encumbered by mortgages, deeds of trust, judgments, and mechanics' liens, executed, recovered, and attached prior to and since the said assignment, that your orators cannot recover or receive any part of their aforesaid debt or demand from or out of the said real estate; and that your orators only source of receiving and collecting their aforesaid debt out of or from the estate of the said John K. Brewster, so as aforesaid assigned, is the said notes and books of account.

And your orators further show unto your honor, that since the making of the said assignment a term of the circuit court of the county of Stephenson has intervened, at which suits might have been brought by the said John A. Clark and Daniel S. Brewster, for the collection of said notes and books of account.

But your orators aver, and so charges the truth to be, that the said John A. Clark and Daniel S. Brewster wholly neglected to bring any suit or making any effort to collect at the said term of said court, any part of said notes or books of account, except in two or three instances, and then in amounts of from seventy-five to less than two hundred dollars.

93 And your orators further show unto your honor, that the said John A. Clark and Daniel S. Brewster are each of them largely engaged in their own personal business, and have no time to devote to the settlement and collection of said notes and books of account, and that hitherto they have neglected to collect the same or to bring suit for that purpose other than as above stated, and that they do now wholly refuse to do anything in execution of the trust reposed in them by the said assignment.

And your orators further show unto your honor, that by reason of the past neglect on the part of the said John A. Clark and Daniel S. Brewster, to perform the said duties of their said trust, a large amount of the said notes and accounts so as aforesaid assigned have been wholly lost, as your orators are informed and believe, and charge to be.

And your orators further show unto your honor, that unless your honor shall immediately appoint a receiver to receive the property, notes, and books of account so as aforesaid assigned, your orators and the other creditors of the said John K. Brewster will never receive much, if any, benefit from the estate so as aforesaid assigned. but that the said notes and books of account will be lost; many of the persons so indebted by said notes and books of account, in the hard monetary pressure of the times, will be apt to become insolvent, others will be apt to sell and dispose of their property, and others abscond from the State.

And your orators further show unto your honor, and so charge the truth to be, that the said John A. Clark and Daniel S. Brewster have been requested by your orators to promptly proceed with the collection of said notes and books of account assigned as aforesaid,

94 but they have and do absolutely refuse to do anything in the premises; and your orators assigned as a reason why your honor should appoint a receiver immediately, the foregoing facts and statements, together with the further facts hereinafter stated.

And your orators further show unto your honor, that *if* the notes and book accounts so as aforesaid assigned, a very large amount thereof was in sums by law collectable before a justice of the peace.

And your orators aver, and so charge the fact to be, that the said John A. Clark and Daniel S. Brewster have never made any effort to collect any part of the said notes or book accounts by suit, before any justice of the peace; and your orators well hoped that the said John A. Clark and Daniel S. Brewster would have faithfully performed the duty imposed on them, by their acceptance of the said assignment.

But now so it is, may it please your honor, that the said John A. Clark and Daniel S. Brewster, combining and confederating with divers persons to your orators unknown, whose names when discovered your orators pray they may be at liberty to insert herein, with apt words to *to* charge them as parties defendants hereto, and contriving how to wrong and injure your orators in the premises, they, the said John A. Clark and Daniel S. Clark, absolutely refuse to do anything in relation to the collection of the notes and accounts as aforesaid assigned to them, and at times they pretend that they are so burdened with their own personal business that they cannot attend to the collection of said notes and accounts; all of which actings, doings, and refusings are contrary to equity and good conscience, and tend to the manifest injury and wrong of your orators in the premises; in consideration whereof, and forasmuch as your orators are en-
95 tirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said John A. Clarke and Daniel S. Brewster, and the rest of their confederates when discovered, may full, true, direct, and perfect answer make (their answers on oath being hereby expressly waived) to all and singular the matter hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated thereto, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, learning, and belief, and that your honor will appoint a receiver with full and ample powers to do and perform all the duties imposed on the said John A. Clark and Daniel S. Brewster by the said assignment aforesaid; and that the said John A. Clark and Daniel S. Brewster, by an order of your honor, be compelled to deliver to the receiver so to be appointed by your honor, all the goods, chattels, real estate, books of account, notes, bonds, bills, and other evidences of debt so as aforesaid assigned by the said John K. Brewster; and the said receiver shall, by the order and decree of this honorable court, be directed to pay all sum or sums of money that may come into his hands by virtue of his appointment as receiver as aforesaid, in the manner and to the person or persons and for the purposes as set forth in the said deed of assignment, and hereto annexed and marked as aforesaid; and your orators further pray that said receiver may be immediately appointed, and that your

orators may have such other and further relief in the premises as the nature of their *same* may require and to your honor shall seem
96 meet. May it please your honor to grant unto your orators the most gracious writ of subpœna of the State of Illinois, to be directed to the said John A. Clark and Daniel S. Brewster and the rest of their confederates, when discovered, thereby commanding them and every of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honor in this honorable court, and there and then to answer all and singular premises, and to stand to. perform and abide such order and decree therein as to your honor shall seem meet; and your orators shall ever pray.

JAMES MITCHELL,
HOLDEN PUTNAM,
RODERICK RICHARDSON,
JNO. A. PAGE.

SWEET & HIBBARD,
Solicitors, &c.

STATE OF ILLINOIS,
Stephenson County, ss:

James Mitchell, of said county, being first duly sworn, on oath doth depose and say, that he is one of the complainants in the foregoing bill of complaint; that he has read and heard read the foregoing bill of complaint; that the matters and things therein stated to be true are true, and that the matters and things stated to be true upon information and belief, this affiant is informed and believes to be true; and this affiant further saith, that the appointment of a receiver, according to the prayer of the said bill, is necessary to secure the debt of the said complainant out of the estate of the said John K. Brewster, assigned as in the said bill of complaint is set forth; and further he saith not.

JAMES MITCHELL.

Subscribed and sworn to this 1st day of February, 1858, before
[L. S.] me. Witness my hand and notarial seal the day and year last above written.

HOMER N. HIBBARD,
Notary Public.

97 STATE OF ILLINOIS,
Stephenson County, ss:

John W. Shaffer, of said county, being duly sworn, doth depose and say, that he is personally acquainted with the parties, complainants and defendants, in the foregoing bill of complaint mentioned; that he has heard the said bill read; that he knows of his personal knowledge that the said John K. Brewster, in said bill named, is indebted to said complainants, but the amount he does not know; that he was personally knowing to the pecuniary condition of a large number of

the persons indebted to the said John K. Brewster, on book accounts, and notes were assigned to the defendants in the said bill of complaint, as in said bill is set forth, and that, had the said assignees been prompt and given their attention to the collection of said notes and book of accounts, a very large amount of the same might have been collected; and this affiant further saith, that his means of knowledge of the state of said notes and accounts is from the fact that he, this affiant, was a partner with the said John K. Brewster when a portion of the goods were sold in which said notes and accounts accrued, and that the only mode of collecting the said notes and accounts is by an active business man taking charge of the same, and giving his undivided attention thereto; and that, with such attention, this affiant believes a great portion of said notes and book accounts may be collected; and further he saith not.

JOHN W. SHAFFER.

Subscribed and sworn to this 1st day of February, A. D. 1858, before me. Witness my hand and notarial seal the day and year last above written.

[L. S.]

HOMER N. HIBBARD,
Notary Public.

98 *Exhibit A.*

This indenture, made the fourth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, between John K. Brewster, of the county of Stephenson and State of Illinois, of the first part, and Daniel S. Brewster and John A. Clark, of the county and State aforesaid, of the second part, witnesseth: That whereas the said John K. Brewster is justly indebted in sundry sums of money, and by reason of several losses which have recently attended his business operations, has been unable to pay and discharge all his liabilities with punctuality or in full, and the said John K. Brewster is now desirous of making a fair and just distribution of his property and effects among his creditors:

Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, assigned, transferred and set over, and by these presents doth grant, bargain, and sell, release, assign, transfer and set over unto the said party of the second part, and to their executors, administrators and assigns, forever, all and singular the lands, tenements and hereditaments, situate, lying and being in the counties of Stephenson, Carrol and Jo Daviess, in the said State of Illinois, and also all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, books of account, evidences of debt, and property of every name, nature and description whatever and wheresoever, of the said John M. Brewster, the said party of the first part, more particularly enumerated and described, but not excluding any property not described in the schedule thereto an-

99 nexed and marked A, to have and to hold the same and every

part and parcel thereof, with the appurtenances, to the said party of the second part, their executors, administrators and assigns; in trust nevertheless, and to and for the following use, intents and purposes—that is to say, that the said party of the second part shall take possession of all and singular the lands, tenements and hereditaments and all other the property hereby assigned or intended so to be, and sell and dispose of the same, either at public or private sale, to such person or persons, for such prices and on such terms and conditions, and either for cash or upon credit, as in their judgment may appear best and most for the interest of the parties concerned, and convert the same into money, and also to collect all and singular the said debts, dues, bills, bonds, notes, accounts, claims, demands, and choses in action, or so much thereof as may prove collectable, and thereupon to execute, acknowledge and deliver good and sufficient deeds and bills of sale, releases, and all other instruments of conveyance that may be necessary and proper to effect a sale and transfer of any and all the estate, property and effects, hereby conveyed or intended so to be; and by and with the proceeds of such sales and collections, the said party of the second part is hereby authorized and empowered to employ one or more agents, attorney or attorneys, who shall be paid out of such proceeds a reasonable compensation for their services; and the said party of the second part shall also, at the charge of the said trust fund, obtain and at all times keep suitable and reasonable insurance on the said property and effects hereby assigned and conveyed, and shall also pay all the taxes now due or to come due on said property until the same shall be sold and disposed of, and the residue of the proceeds of such sales and collections
101 shall be considered as the net proceeds of the property and effects *hereby assignment.* And first, by and with the net proceeds the said party of the second part shall pay and discharge in full the several and respective debts, notes, demands and sums of money due to the several persons named and designated in the schedule hereto annexed and marked B, together with the interest due and to grow due on such debts, notes, demands and sums of money respectively, and if such net proceeds shall not be sufficient to pay the said debts and liabilities mentioned in said schedule B, in full, then the same shall be paid pro rata with such net proceeds, share and share alike, as far as the same will go, in proportion to their respective amounts.

And secondly, by and with the rest, residue and remainder of such net proceeds, if any shall remain after the payment in full of the said debts and liabilities mentioned in the said schedule B, said party of the second part shall pay to John W. Shaffer and Louis F. Burrell, or either of them, all such sum or sums of money as the said John W. Shaffer and the said Louis F. Burrell, or either of them, may or shall be legally liable to pay on any promissory note or notes made and executed to the several parties and firms mentioned in marked schedule C, and hereto annexed, and which said notes have been executed in part by the late firm of John K. Brewster and Company, and others of the said notes have been executed in the name of said firm of

John K. Brewster & Company since the dissolution of said firm, (which said several debts mentioned in said schedule marked C, the said party of the first part, upon the dissolution of said firms of John K. Brewster & Co., assumed and agreed to and with said John W. Shaffer and Louis F. Burrell to
102 pay and discharge, but has hitherto been unable so to do;) and if the said rest, residue and remainder of said net proceeds shall not be sufficient to pay the said legal liabilities of the said John W. Shaffer and Louis F. Burrell, in the premises, then the same shall be paid pro rata with such rest, residue and remainder of said net proceeds, in proportion to the amount for which they shall, severally or jointly, legally be liable as aforesaid.

And thirdly, by and with the rest, residue and remainder of said net proceeds, if any shall remain after paying in full the said legal liabilities of the said John W. Shaffer and the said Louis F. Burrell, above specified, the said party of the second part shall pay and discharge in full the several and respective debts, notes and sums of money due or to become due from the said party of the first part, or for which he is liable, to the several persons and firms named and designated in the schedule hereto annexed and marked D, together with the interest due and to grow due on such debts, notes and sums respectively; and if the said rest, residue and remainder of said net proceeds shall not be sufficient to pay such debts and liabilities mentioned in said schedule D, in full, then the same shall be paid pro rata with such rest, residue and remainder of said net proceeds, share and share alike, as far as the same will go, in proportion to their respective amounts.

And fourthly, by and with the rest, residue and remainder of said net proceeds, if any shall remain after paying in full the said debts and liabilities mentioned in schedule D, the said party of the second part pay and discharge all the other demands and liabilities whatsoever now existing, whether due or hereafter to become due, against the said party of the first part, provided such remainder shall
103 prove sufficient for that purpose; and if insufficient, then to apply such remainder to the payment and liquidation of such debts and demands pro rata, share and share alike, according to their respective amounts, as far as such remainder will extend for that purpose.

And lastly, the said party of the second part shall return the surplus, if any remains after the payment of all debts due by said party of the first part as aforesaid, to the said party of the first part, his executors, administrators or assigns.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, at Freeport, the day and year aforesaid.

JOHN K. BREWSTER. [SEAL.]

The words "but not excluding any property not described," on first page, "with" on third page, legal on 4th page, were interlined, and the words "debts and," on the 4th page, were erased before execution.

Witness: HOMER N. HIBBARD.

We, the undersigned, Daniel S. Brewster, and John A. Clark, having been appointed assignees, in and by the foregoing deed of assignment, do by these presents accept the trust, and agree to carry out the same.

Witness our hand :

DAN'L S. BREWSTER. [SEAL.]
JOHN A. CLARK. [SEAL.]

Witness : H. N. HIBBARD.

STATE OF ILLINOIS,
Stephenson county, ss :

I, Homer N. Hibbard, a notary public, in and for said county, do hereby certify, that John K. Brewster, personally known to me, to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the same, as his free and voluntary act and deed, for the uses and purposes therein set forth.

104 [SEAL.] Given under my hand notarial seal, this fourth day of November, A. D. 1857.

HOMER N. HIBBARD, *Notary Public.*

105 *Schedule A.*

Lands situated in Stephenson county, and State of Illinois, to wit :

The northwest quarter of the northeast quarter of section number twenty-seven, (27,) the south half of the southwest quarter of section number twenty-seven, (27,) the east half of the northeast quarter of section number thirty-three, (33,) the west half of the northeast quarter of section number thirty-four, (34 ;) all of the said tracts being in township number twenty-nine, (29,) north of range number seven, (7) east of the fourth principal meridian—in all four hundred and forty acres, more or less.

The mills and mill lot at Winslow, in said county of Stephenson, with the privileges and appurtenances thereunto belonging, and described as follows, to wit :

Commencing at the northwesterly corner of lot No. one, (1,) in said Winslow ; thence westerly on a line which shall range with the northern boundary of said lot, to a point on the north and south line, running through the middle of section twenty-two, on which said mills and lands are situated ; thence from said point, south to the centre of said section twenty-two ; thence still south to a point forty rods distant from said centre ; thence east to a point due north of the angle on Hubbard street, near the southeasterly corner of the burying ground fence ; thence south from said point to said angle in Hubbard street ; thence along Hubbard street to Sewal street; thence along the mill lot to the southeast corner of lot eighty-seven ; thence westwardly fifty feet ; thence northerly eighty feet, parallel with the west line of lots eighty-six and eighty-seven, to the south line of lot

eighty-five; thence westerly to the southwest corner of lot eighty-five; thence along the mill lot to the southwest corner of lot forty-two; thence northwesterly along the rear of the lots bordering upon the mill-pond, to the place of beginning.

106 Also that portion of the southeast quarter of the northwest quarter of section twenty-two, in township number twenty-nine, (29,) north of range six east, that lies south of the mill-race, containing thirty-nine acres, more or less. Also lot number forty-four, (44,) of the town of Winslow, on which stands the new stone mill; all of which is according to the recorded plat of said town, reserving all the roads which are laid out over or across any part of said land lying in said town of Winslow.

It being expressly understood, that said grantees, their heirs and assigns, shall have the right forever to maintain the dam now existing on the northeast quarter of said section twenty-one, in said township number twenty-nine, (29,) so as fully to supply with water the canal leading from said dam to the mills, which canal they are to have the right forever to maintain, and the right to enter upon the lands and lots through which the said canal passes, to view and repair the same at all reasonable times.

Also the following described tract of land, to wit: Commencing at the northeasterly corner of lot number seven, (7,) in block number fifty-six, (56,) in the original town of Freeport, (now city of Freeport,) running thence southerly, on the easterly line of said lot number (7,) thirty-five feet; thence southwesterly on a line parallel with Bridge street, twenty feet; thence northwesterly parallel with Mechanic street, thirty-five feet to Bridge street; thence northeasterly along Bridge street, twenty feet to place of beginning, reserving from said last described tract free passage six feet wide over and through said last described tract; also lots number five (5) and (6,) in said block, number fifty-six, (56,) in said original town

107 of Freeport; also the easterly one-half of lot two, (2,) and all of lots number three, (3,) four, (4,) and five, (5,) in block number fifty-one, (51,) in said original town of Freeport.

Also the following described tract of land lying and being in the county of Jo Daviess and State of Illinois, to wit: The south half of the northeast quarter of section number nine, (9,) in township number twenty-seven, (27,) north of range number five, (5,) east of the fourth principal meridian.

Also the following described tract of land lying and being in the county of Carroll and State of Illinois, to wit: The east half of the northeast quarter of section eight, (8,) and the west half of the northwest quarter of section nine, (9,) in township twenty-five, (25,) north of range four, (4,) east of the fourth principal meridian.

Deeds of conveyance for the above-described lands have been this day executed by John K. Brewster and Emily D. Brewster, his wife, to the said John A. Clark and Daniel S. Brewster, the more effectually to carry out the intents and purposes of the annexed deed of assignment.

108						
1857, July 17	Jacob Wolf	John K. Brewster	90 days	$5 22		
1852, June 2	John Wrathall	"	1 "	1 00		
1857, July 25	Charles Wilson	"	60 "	11 86		
" Aug. 1	D. C. Williams	"	60 "	30 38		
" July 2	James Wilson	"	Oct 1, 1857	702 63		
1853, Apr. 20	James Williams	"	60 days	7 86		
1856, Sept. 8	J. M. Winders	"	" "	14 76		
1856, Jan. 2	John Wilson	J. K. Brewster & Co.	1 day	142 99	$80 00	
1857, Jan. 1	Lewis Gibler	J. K. Brewster	" "	77 40		
1855, Aug. 11	"	"	" "	99 85	104 00	
	Stephenson county, orders on treasury			103 00		
1857, Jan. 15	E. H. Hinckley	J. K. Brewster	30 days	15 00		
" Oct. 21	Evans Hunter	"	1 day	20 90		
" May 9	W. O. Denton	"	" "	57 05		
" " 20	A. M. Denton	"	" "	67 38		
" " 8	James Van Pelt	"	" "	32 35		
" Oct. 10	Bernard Tull	"	" "	8 76		
1854, Sept. 1	Henry Sands	"	" "	4 25		
1857, May 16	Henry Mook	"	14 "	4 50		
1857, Apr. 8	Alva D. Smith	"	1 "	50 00		
" March 11	John Mook	"	" "	15 21		
" Apr. 22	John Ellwood	"	June 1,1857	30 64		
1855,March 12	Jonathan Hay	"	1 day	52 80	45 14	
1857, Aug. 6	Jane B. Wilson	"	60 days	20 85		
" Feb. 2	Benj. Wilber	"	1 "	16 01		
" Sept. 24	Nathan Willis	"	30 "	20 51		
" Feb. 25	W. Van Winkle	"	1 "	116 51		
1857, Sept. 21	Giles Van Brorklin	"	30 "	30 95		
1854, Feb. 25	G. Falmer	"	" "	3 00		
1852, June 26	Daniel Vance	"	20 "	4 75		
1856,March 17	Jonathan Lipping	"	1 "	10 68		
				1,779 09	229 14	
1857, Mar. 20	Patrick L. Furrin	"	1 "	70 41	40 00	
" Mar. 23	Peter Drissus	"	"	6 22		
1857, Jan. 1	Oliver P. Shaddle	"	"	22 00		
109						
1857, Sept. 3	S. Slaight	John K. Brewster	30 days	33 87	30 00	
" " 28	Jonah Stedman	"	" "	9 60		
" Mar. 7	Sam'l Shaddle	"	1 "	27 22	20 30	
" Feb. 19	Joseph D. South	"	" "	48 55	37 00	
1855, Jan 27	James Stevens	"	" "	28 10	25 00	
1856, Dec. 18	Ezra Strong	"	" "	21 76	12 00	
1852, Jan. 1	Milton Steebe	"	4 months	37 46	2 00	
1856, Dec. 31	Martin Schopfel	"	1 day	15 00	6 00	
Due	John W. Shaffer	"	12 shares, R.&M.RR	1,200 00	1,000 00	
1854, Sep. 12	L. G. Reed	"	1 year	10 35		
1854, Mar. 6	Sherman Rodgers	"	1 day	88		
1857, July 10	S. Reese	"	" "	8 12		
" Feb. 16	John Roonan	"	" "	24 10	15 00	
Due	W. S. Rust	"	" "	6 63		
1851, Nov. 15	"	"	75 "	29 15	20 00	
1852, Mar. 28	"	"	June 1,1853	6 63	1 92	
1857, Sept. 24	D. W. Parsons	"	30 days	127 18	97 00	
1857, Oct. 10	Sam'l Pennicoff	"	1 "	10 95	7 00	
1854, June 10	J. J. Pellett	"	1 "	5 00		
1857, Sept. 26	Jacob Parker	"	30 "	8 01		
1854, May 25	Richard Patterson	"	90 "	285 80		
1853, Apr. 5	Michael Nagle	"	1 "	2 70		

1850, Sept. 12	John McNamara	John K. Brewster	due	$0 75		
1857, June 25	Edmund Mullackey, 2d	"	1 day	20 85		
1856, Jan. 24	H. Mayers	"	" "	23 19		
1857, Oct. 6	A. E. Mullackey	"	2 weeks	3 35		
1853, July 30	Cornel. McGhee	"	1 day	20 67		
1851, Sept. 22	Peter Mullen	"	30 "	71 50		
				1,985 80	$1,200 22	
1857, July 6	Jacob Miller	"	1st Sept.	26 02		
" Mar. 28	Philip C. Morgan	"	1 day	23 04	15 00	
1855, Jan. 22	Lighthart, Knapp & Co.	"	10 "	99 70		
1857, Sept. 5	Owen Lindeman	"	30 "	7 04		
" July 4	Levi Lucas	"	1 "	22 80		
110						
1857, July 20	Stephen Kindell	J. K. Brewster	90 days	7 06	3 00	
" " 17	L. M. Kroetzer	"	Sept. 1, 1857	9 26		
" Mar. 21	Solomon Kaley	"	1 day	9 88	8 00	
" June 27	Charles Kohler	"	" "	44 11	1 25	
1856, Dec. 8	"	"	" "	73 75		
1857, Sept. 24	Hiram Knight	"	" "	23 00	10 00	
" " 22	Wm. Ingraham	"	30 "	13 52		
1855, Jan. 22	Abraham Johnson	"	1 "	49 79	25 00	
1854, Sept. 21	E. B. Hilliard	"	60 "	236 09	239 67	
1855, Jan. 26	Harvey Hartson	"	1 "	1 43		
1857, Aug. 28	Philip Huum	"	1 "	1 38		
1855, Dec. 21	Emanuel Hollman	J. K. Brewster & Co	" "	24 67		
1852, Oct. 20	John Hood	J. K. Brewster	60 "	18 00		
1857, June 15	O. P. Hopkins	"	1 "	32 15		
1857, Feb. 28	John Haughy	"	" "	8 29		
1854, Oct. 3	Patrick Giblin	"	1 "	32 45		
" June 22	Levi Goodrich	"	" "	39 97		
1854, Feb. 16	Geo. Gould	"	30 "	3 25		
1857, Jan. 13	Jno. Gibler	"	1 "	26 00		
1854, Aug. 29	W. H. Garrett	"	" "	5 29		
1857, Oct. 2	Valentine Gilman	"	" "	5 43		
" July 4	S. B. Gates	"	3 months	15 71		
" June 27	Joseph Gross	"	1 day	85 25	35 00	
1856, Feb. 27	C. P. Fisher, M. D.	"	1 day	9 64		
1857, Apr. 27	Cornelius Faley	"	" "	5 22		
" Sept. 22	"	"	30 days	36 51		
				995 70	336 92	
1854, July 11	Josiah Fowler	"	1 day	3 60		
1857, Mar. 21	Jno. Fosler	"	" "	34 28	20 00	
" Feb. 27	John Frizzell	"	" "	49 63	20 00	
1856, Nov. 29	James Elliot	"	60 "	20 00		
" Dec. 1	R. J. Edmonds	"	1 "	94 25		
1857, May 12	Amos G. Ells	"	1 year	100 00		
1853, Jan'y 11	M. G. Edson	"	1 day	16 41		
1857, Sept. 28	Joseph Dickey	"	30 "	13 38		
111						
1857, May 7	O. P. Duncan	J. K. Brewster	1 day	42 49	20 00	
1851, July 30	Joseph Doan	"	1 mo.	3 92		
1857, July 2	F. M. De Armit	"	1 day	14 16	10 00	
" Feb. 28	Geo. Duffield	"	60 "	31 09		
" Aug. 12	Wm. H. Davis	"	30 "	33 66	18 00	
" Apr. 2	John De Armit	"	1 "	463 00	42 79	
" Sept. 15	Asa Carey	"	30 "	18 54		
" " 5	R. H. Crissen	"	" "	11 97		
1857, Oct. 8	Louis Chapin	"	Due	1 10		
1857, Oct. 5	Mat. Carmady	"	"	3 60		

1855, Jan. 1	Asa Carey	J. K. Brewster	1 day	9 68	$ 0
1857, Feb. 21	Asa Carey	J. W. Carey	Nov. 1, 1857	15 00	
1857, Sept. 24	R. L. Chitty	J. K. Brewster	30 days	7 50	
1857, Jan. 3	Daniel Berry	"	1 "	4 00	
1856, Jan. 2	Alson Brownell	"	" "	44 67	
1855, June 26	Louisa Burchard	"	" "	92 61	11 32
1853, July 23	B. Barber	J. K. Brewster & Co.	" "	11 25	
1851, Mar. 2	Morris R. Barker	J. K. Brewster	" "	28 87	
1853, Apr. 16	F. P. Bower	"	" "	6 30	2 00
1852, Jan. 26	Wm. A. Baker	"	10 "	80	
1851, Mar. 10	Ben. Brenner	"	1 "	15 00	
1851, Mar. 6	Carl Bues	"	" "	3 00	
1851, July 4	N. Blackamore	"	30 "	14 16	
				1,210 52	153 01
1857, Mar. 18	Joseph Belrail	"	1 "	17 27	
" Oct. 3	H. S. Buckley	"	" "	5 00	
" Aug. 20	John Brown	"	" "	85 26	
" July 22	J. H. Bean	"	90 "	3 88	
" Oct. 20	J. M. Brewster	"		3,000 00	
1856, Mar. 4	Jon'a Brown	"	1 "	13 61	
1856, Mar. 20	Giles L. Taylor	John K. Brewster & Co	1 "	4 95	
1854, Mar. 17	B. Stowell	" "	1 "	25 30	
1855, Sept. 29	Geo. Sherman	" "	1 "	17 61	
1855, Aug. 14	L. D. Emmons	" "	1 "	21 30	
1855, Nov. 5	John Bentley	" "	Jan. 1, 1856	38 42	28 00
112					
1856, Nov. 22	Wm. M. Fenley	John K. Brewster & Co	Ap. 1, 1856	10 00	
1856, June 19	Everett & Tull	" "	60 days	43 17	10 00
1856, Aug. 30	Oliver P. Winters	N. Willis	12 mo	57 00	40 00
1857, May 15	James Wilson	C. A. Sheetz	Due	7 00	
1855, May 5	G. H. Watson	Silas B. Kelley	6 mo	10 00	
1857, Apr. 1	D. Forbes	S. S. Potter	20 days	36 00	
1856, Nov. 1	C. W. Rockwell	E. T. Macomber	May 1, '51.	45 00	34 00
1856, May 15	Edward Murphy	Jno. De Aumit	4 mo	8 00	
1855, Dec. 3	Jos. McCornell, Jno. H. Clains	Ira S. Job	"	24 00	19 00
1849, June 7	Thos. Hutchinson	O. W. Brewster	1 day	1 63	
1856, Apr. 24	Geo. Fisher	H. Kelper	6 mo	50 00	32 00
1856, May 30	E. Carey	John De Aumitt	60 days	7 00	7 00
1851, Oct. 8	D. Chapin	J. K. Brewster	Due	1 10	
1856, Dec. 29	L. D. Clark	H. G. Grultarn	6 mo	10 00	
1845, Mar. 3	B. P. Belknap	Dan'l S. Brewster	1 ton hay.		
1857, Jan. 15	Orsamus Barnes, O. S. Mitchel	C. H. Chitty	Sept. 1, '57.	8 11	
				3,550 61	170 50
1857, Jan. 5	Lorenzo Lee	John K. Brewster	60 days	97 73	
1856, May 10	H. A. Jackson	"	July 1, '59.	*425 87	
" May 10	"	"	" 1, '58.	*225 00	
" Nov. 8	C. C. Shuler	S. L. Carey	Nov. 8, '57.	*295 00	
" " "	Jesse Little	"	" "	*280 00	
1857, Mar. 18	John Beehl	John K. Brewster	Oct. 14, 1858	*130 00	
" " "	"	"	" 1859	*120 00	
" " "	"	"	" 1860	*110 00	
1854, Apr. 1	L. H. Cutler	John S. Emmert	6 mo	82 37	45 00
1857, July 26	W. S. Gray	John K. Brewster	90 days	†15 43	
" May 25	Jacob Cinnerman	"	3 mo	†100 00	
" July 20	Wm. Gemmil	"	60 days	†18 57	
" " 24	W. S. Burgess	"	30 "	†37 66	
" " "	Robt. Bell	"	90 "	†34 43	
" " 27	Charles Snyder	"	90 "	†36 11	

* Left with A. Albertson as collateral to secure the payment to him of a note for $1,268 71.

† These notes deposited with J. M. Bailey to secure a note for $568, dated July 28, 1850, due 30 days after date.

1857, July 27	Jacob Rice	John K. Brewster	90 days	*$47 09	
" " 25	Geo. McGilligan	"	" "	*87 08	
" " 24	John Milliken	"	60 "	*48 37	
113					
1857, July 23	A. O. Cutler	John K. Brewster	60 days	*51 85	
" " 21	W. H. Eells	"	Oct. 1, 1857	*46 46	
" " 25	Christopher Bennett	"	2 mo.	*52 60	
" " "	H. G. Umphrey	"	60 days	*23 52	
1856, Jan. 3	H. Williams	"	1 day	†92 66	
1857, July 28	"	"	4 mo.	†28 70	
1856, Dec. 8	Alvin Fuller	Wm. Ayer	1 year	†20 00	
1857, Oct. 1	J. Willfong	J. K. Brewster	30 days	†47 22	
" " 17	Robinson Beard	"	1 "	†36 62	
1857, Sept. 21	Solomon Straw	"	1 "	† 5 73	
1857, Apr. 23	"	"	" "	†36 12	
1857, Sept. 24	Geo. Stubbs	"	" "	†46 27	
1857, May 5	Philip Fowler	"	30 "	†39 59	
1857, Sept. 22	Patrick Flyn	"	30 "	†78 23	
1857, Mar. 12	John Byrne	"	1 "	†30 71	
" Sept. 30	Philip Hogan	"	1 "	†23 76	
" Oct. 2	Solomon Strong	"	1 "	†42 52	
" Sept. 22	James Robb	"	30 "	†37 38	
" " 30	Dennis Mahar	"	30 "	†29 23	
" " 22		"	30 "	†27 29	
" Oct. 19	Rufus Byington	J. K. Brewster	June 1,1859	†59 68	
" Oct. 10	Jonathan Pennecoff	"	1 day	†34 07	
" " 2	Christel Rosensteil	"	" "	†25 31	
1856, Nov. 18	L. Montague	"	1 year	‡30 00	
1857, June 9	"	"	" "	‡174 46	
1857, Jan. 5	James B. Veile	"	1 day	‡48 58	
1857, June 23	Rachel Lee	"	" "	‡63 35	
1857, Jan. 5	Alex. Joy	"	" "	‡53 64	
1857, April 3	Henry Pope	"	" "	‡168 47	
1857, Apr. 17	Jane	"	" "	‡107 22	
1857, Aug. 18	O. E. Stearns	J. A. Daniels	1 year	‡240 00	
1856, Aug. 18	"	"	" "	‡200 00	
1857, Feb. 3	W. S. Burgess	J. K. Brewster	Dec. 1, '57.	‡384 13	
1857, Apr. 13	Jehu Piles	"	1 day	‡100 00	
" Apr. 13		"	" "	‡201 18	
114					
1857, May 9	H. E. Anderson	J. K. Brewster	Jan. 1, 1858	‡200 63	
" " 8	O. H. Hazard	"	6 mo.	‡500 00	
1855, June 27	Wm. Lamb	"	1 day	55 36	$15 00
" Apr. 18	Sam'l Milliken	"	" "	§47 14	
" June 12	L. O. Pekam	Wm. H. Hollenbeck	90 days	§105 00	20 00
1853, Dec. 5	Lewis T. Elgin	J. K. Brewster	30 "	§7 00	5 00
1854, Feb. 14	"	"	" "	§4 50	
1852, Sept. 6	Pain	"	1 "	§3 18	
1856, Mar. 14	James Miller	"	" "	§46 92	
1856, Feb. 26	Thomas Wilson	"	1 "	§12 47	
1855, June 27	Wm. Lamb	"	1 "	§42 03	

* These notes deposited with J. M. Bailey to secure a note for $561, dated July 28th, 1857, due 30 days after date.

† These notes are left as collateral to secure the payment to James Mitchell & Co. of note for $689 47 I had of J. Mitchell & Co. to secure payment of notes. Left in hand of James Mitchell & Co. to secure notes.

‡ Left with John A. Clark as collateral to secure the payment of two notes for $1,000 each, upon which he is security.

§ Left with S. Lankey for collection.

115 The books of account and accounts of John K. Brewster.

The books of account and accounts of John K. Brewster & Company, which company was composed of John K. Brewster, John W. Shaffer and Louis F. Burrell; and the books of account and accounts of John K. Brewster & Company, said company composed of John K. Brewster and John W. Shaffer, including ledgers, day-books and cash-books.

Ten shares of stock in the Freeport Manufacturing Company.

Sixteen shares of stock in the Freeport Gas Light and Coke Company.

Twenty-eight shares of stock in the Racine & Mississippi Railroad Company.

Two horses, 1 wagon, 1 top buggy, 23 head of neat cattle, 1 Manny reaper, 3 ploughs, 1 harrow, 1 cutting-box, 1 fanning-mill, 3 sleds, 10 tons of hay, 1 set harness, about 400 bushels oats, about one thousand bushels of wheat in Winslow mills.

116 *Schedule B.*

One note due James Mitchell & Co., dated July 17th, 1856, due in thirty days, for one thousand dollars, upon which John A. Clark is security.

One note due James Mitchell & Co., dated October 14th, 1856, due October 14th, 1857, upon which John A. Clark, A. C. Hunt, S. L. Carey and H. Hemingway are securities, for the sum of thirty-five hundred and twenty dollars, with ten per cent. interest.

One note due James Mitchell & Co., dated May 27th, 1857, for one thousand dollars, upon which John A. Clark is security, due thirty days after date, with ten per cent. interest after date.

One note due James Mitchell & Co., dated May 27, 1857, for one thousand dollars, upon which John A. Clark is security, due thirty days after date, with 10 per cent. interest after date.

The sum of three hundred and nine dollars, due to James Mitchell & Co. from Clark & Brewster, on their note dated May 8th, 1854, and due June 23d, 1854, the said firm of Clark & Brewster having been composed of John A. Clark and John K. Brewster.

One note due James Mitchell & Co., dated June 2d, 1857, for three hundred and twelve dollars, due 30 days after date, upon which Joseph M. Brewster is security.

One note due James Mitchell & Co., dated 20th May, 1857, for one thousand dollars, due 30 days after date, upon which Joseph M. Brewster is security.

One note due De Forrest, Hyde & Co., for about one hundred and forty dollars, upon which A. T. Green is security.

One note due James Brown, dated September 1st, 1857, due 60 days after date, for six hundred and sixty-six $\frac{62}{100}$ dollars, upon which A. C. Hunt is security.

117 A part of one note executed by John K. Brewster and Owen E. Stearns, to one S. G. Godley, for fifteen hundred dollars, to wit, such part of said note as said Owen E. Stearns may be liable to pay, after deducting the amount which said Owen E. Stearns is indebted by note or ortherwise to John K. Brewster.

An account due to William W. Kennison, of one hundred and eighty-five dollars and forty cents.

One note due Joseph Degon, dated October 1st, 1857, due one year, for three hundred dollars.

An account due to the estate of Peter D. Fisher, deceased, which said John K. Brewster as administrator of said estate, amounting to about five hundred dollars.

Schedule C.

One note to T. A. Simmons & Co., of Boston, Massachusetts.
One note to S. B. Chittenden & Co., of New York city.
One note to Kimball & Robinson, Boston, Mass.
One note to Steward & Baird, of Johnston, New York.
One note to Bigelow, Bull & Knight, of Boston, Mass.
One note to Converse, Harding & Co., Boston, Mass.
One note to Austin, Sumner & Co., Boston, Mass.
One note to Skinner, Kent & Co., Boston, Mass.
One or more notes to Bowen, McNamee & Co., New York city.
One or more notes to Dana, Farrar & Hyde, Boston, Mass.
One or more notes to Lee, Case & Co., New York city.
One or more notes to Callendar, Rogers & Co., Boston, Mass.
One or more notes to Pierce, Howe & Co., Boston, Mass.

118 *Schedule D.*

One note due Ross Babcock, bal. due about			$162 17
One note due Ann J. Pollock,	"	"	300 00
One note due Dennis Flynn,	"	"	150 00
One note due Isaiah Johnson,	"	"	100 00
One note due Warner Wells,	"	"	100 00
One note due Carson Wicks,	"	"	250 00
One note due James Alexander,	"	"	85 00
One note due Nelson Wait,	"	"	50 00
One note due Loyal L. Munn,	"	"	1,000 00
One note due Julius Bastress,	"	"	600 00
One note due Rev. C. C. Best,	"	"	500 00
One note due Nelson Hulburt,	"	"	100 00
One note due admr. of estate of Chauncey Stebbins			500 00
One note due W. H. Eells, bal. due about			40 00
One note and ac. due Everett, Clark & Co.			150 00
One note due A. Ludlow, bal. due about			100 00
Account due N. Corwith & Co.	"	"	400 00
One note due Ellamchaine,	"	"	700 00
Account due Taylor & Co.,	"	"	1,500 00
65 notes, payable to Joseph Norris, signed by John K. Brewster, Joseph M. Brewster, Daniel S. Brewster, and O. W. Brewster, for $100 each, dated May 18th, 1857, and due the first on Nov. 18th, 1857, and respectively at intervals of 30 days thereafter, amounting in all to			6,500 00

All such amounts as may be found due to, upon a settlement with, the following named persons, for services rendered as clerks, book-keepers, and laborers, or for material, or labor furnished or performed

in the erection of the hotel building or otherwise, for said John K. Brewster, to wit: Martin Kimball, Charles H. Little, Patrick Quinn, James Hogan, Patrick Tobin, John Glover, Dennard Schockley, Thomas Collman, John Wolfinger, and Simon Austine.

119 An account due Rollin De Witt, about $65 00
An account due John Furneance, " 68 65
An account due Mrs. Wahler, " 40 00
An account due Rudy & Bowman, of Lancaster county, Penn., about 300 00

OFFICE CLERK CIRCUIT COURT.

STATE OF ILLINOIS,
Stephenson county, ss:

I, Luther W. Guiteau, clerk of circuit —— in and for said county, certify that the foregoing deed of assignment was filed for record this 5th day of November, A. D. 1857, at 9¾ o'clock a. m., and recorded in books "26" of deeds, pages 217, 218, 219, 220, 221, 222, 223, 224, 225, 226 and 227, and examined.

L. W. GUITEAU.

120 In the circuit court of Winnebago county, of the February term, A. D. 1858.

STATE OF ILLINOIS,
Winnebago county:

JAMES MITCHEL, HOLDEN PUTNAM, RODERICK RICHARDSON, JOHN PAGE,
vs.
JOHN A. CLARK and DANIEL S. BREWSTER. } In chancery.

To John A. Clark and Daniel S. Brewster, the defendants in the above entitled cause:

GENTLEMEN: You will please to take notice that we intend, by our solicitors, to apply to the circuit court to be holden in and for the county of Winnebago, in said State, on the chancery side thereof, on the first day of the next term thereof, or as soon thereafter as counsel can be heard, for the appointment of a receiver of the estate, property and effects of John K. Brewster, assigned to yourselves on the fourth day of November, A. D. 1857, according to the bill filed in this cause, a copy of which said bill you are hereby and herewith served, which motion will be founded upon the said bill and affidavits thereto attached, with copies of which affidavits you are also herewith served.

JAMES MITCHELL.
HOLDEN PUTNAM.
RODERICK RICHARDSON.
JOHN A. PAGE.
By SWEET & HIBBARD,
Their Solicitors.

121 We do hereby acknowledge due service of a copy of the above notice on us severally; also due service of the copy of the bill of complaint in the cause, as entitled in the foregoing notice and referred to in said notice; also a copy of the affidavits attached to said bill and referred to in said notice—this first day of February, A. D. 1858.

DAN'L S. BREWSTER.
JOHN A. CLARK.

Indorsed: Filed Feb'y 1, 1858.

M. B. DERRICK, *Clerk.*

122 MONDAY, *Feb'y* 1, 1858.

UNITED STATES OF AMERICA,
State of Illinois, Winnebago county, ss:

Pleas before the Hon. Benj. R. Sheldon, judge of the fourteenth judicial —— of the State of Illinois, at a term of the Winnebago county circuit court for hearing and deciding chancery causes, began and held at the court-house, in the city of Rockford, in said county, on the 1st day of February, 1858.

Present: Hon. Benj. R. Sheldon, judge.

Attest: MORRIS B. DERRICK, *Clerk.*

In the circuit court of Winnebago county, in the State of Illinois, of the February term, A. D. 1858.

JAMES MITCHELL, HOLDEN PUTNAM, RODERICK RICHARDSON, and JOHN A. PAGE,
vs.
JOHN A. CLARK and DANIEL S. BREWSTER.

And now, at this day, come the defendants, by Jason Marsh, esquire, their solicitor, and enter their appearance in this cause, and consent that the complainants' application for the appointment of a receiver be heard at this present term of this court.

123 In the circuit court of Winnebago county, of the February term, A. D. 1858.

STATE OF ILLINOIS,
Winnebago county:

JAMES MITCHELL, HOLDEN PUTNAM, RODERICK RICHARDSON, and JOHN A. PAGE,
vs.
JOHN A. CLARK and DANIEL S. BREWSTER.
} In chancery.

Now, at this day, came on to be heard the motion of the complainants, by Sweet, their solicitor, to appoint a receiver of the estate, lands, tenements, goods, chattels, rights, credits, books of account, bonds, bills, dues, demands, notes, judgments, and other evidence of indebtedness, assigned and sold by John K. Brewster to the said defendants in trust for the uses and purposes mentioned in a certain

deed of assignment made and executed by the said John K. Brewster to the said defendants on the fourth day of November, A. D. 1857; and the defendants appearing, by Jason Marsh, their solicitor, and upon reading the bill of complaint filed in this cause, and the affidavits of James Mitchell and John W. Shaffer to said bill attached, and it also appearing to the court that the said defendants were duly served with notice of said application, and after hearing the argument of counsel, on motion of Sweet, of counsel for the complainants, it is ordered, adjudged, and decreed that James Mitchell be, and he hereby is, appointed to receive all the goods, chattels, lands, tenements, rights, credits, dues, demands, notes, bonds, bills, judgments, books of account, and other evidence of indebtedness, sold, conveyed, and assigned, as is in said bill of complaint set forth, stated, and charged by the said John K. Brewster to the said defendants. And

124 it is further ordered by the court that the said defendants do assign and transfer the said trust estate vested in them by the said deed of assignment, in the said bill of complaint set forth, to the said James Mitchell; and it is further ordered by the court that the said James Mitchell shall proceed to dispose of the said trust estate, and apply the proceeds thereof in the manner, and to the persons, and for the purposes set forth in the said deed of assignment; which said deed of assignment is set forth in the said bill of complaint filed in this cause. And it is further ordered by the court that, before the said James Mitchell shall enter upon the performance of the duties of his office of receiver, to which he is hereby appointed, he shall enter into bond to the people of the State of Illinois, for the use of all persons that may be interested, with Holden Putnam, his surety, to be appraised by the master of this court in the sum of ten thousand dollars, conditioned for the faithful performance of his said duties as receiver, and for the faithful application of all the estate, land, tenements, rights, credits, notes, book accounts, bonds, bills, and other evidences of indebtedness, according to the uses and trusts created by the said deed of assignment.

BENJ. R. SHELDON.

And afterwards, to wit, on the 3d Feb'y, 1858, the following entry was made, as appears of record:

JAMES MITCHELL, HOLDEN PUTNAM, RODERICK RICHARDSON, and JOHN A. PAGE,
vs.
JOHN A. CLARK and DANIEL S. BREWSTER.

And now comes the complainants, by their solicitors, and files the bond of James Mitchell, as principal, and Holden Putnam, surety, which bond is approved by William Lathrop, master in chancery:

125 Know all men by these presents that we, James Mitchell, as principal, and Holden Putnam, as his sureties, are held and firmly bound unto the people of the State of Illinois, for the use of all persons interested who are creditors of John K. Brewster—for whose benefit a certain deed of assignment was made and executed

on the fourth day of November, A. D. 1857, by said John K. Brewster, to John A. Clark and Daniel S. Brewster, which said deed of assignment is recorded in the office of the recorder in and for the county of Stephenson, in the State *of* aforesaid—in the sum of ten thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we, and each of us, bind ourselves, respectively, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the second day of February, A. D. 1858.

Whereas, by an order of the circuit court in and for the county of Winnebago, in the State of Illinois, in chancery sitting, made in a cause pending in said court, in which James Mitchell, Holden Putnam, Roderick Richardson, and John A. Page are complainants, and John A. Clark and Daniel S. Brewster are defendants, it was, among other things, ordered that said James Mitchell be appointed a receiver of the property, equitable interests, things in action, and effects which were assigned to said John A. Clark and Daniel S. Brewster by John K. Brewster, in and by virtue of the deed of assignment hereinbefore mentioned:

Now, therefore, the condition of the above obligation is such, if the said James Mitchell shall do as required by the rules and practice of said court, and shall, whenever thereunto required, duly account for what he shall so receive or have in charge as receiver in the said cause, and pay and apply what he shall so receive or
126 have in charge as he is or may from time to time be directed by said court, and obey such orders as said court may from time to time make in relation to said trust, and in all respects faithfully discharge the duties of the said trust, then the above obligation to be void, but otherwise to be and remain in full force.

JAMES MITCHELL. [SEAL]
HOLDEN PUTNAM. [SEAL.]
[SEAL.]

Sealed, signed, and delivered in presence of—

The above bond approved by me.

WM. LATHROP,
Master in Chancery.

Feb'y3 d, 1858.

127 STATE OF ILLINOIS,
Winnebago County, ss:

I, Morris B. Derrick, clerk of the circuit court in and for said county, do hereby certify the foregoing to be correct copies of the papers on file and the entry of records in the above-entitled cause in my office.

[L. S.] Witness my hand and the seal of said court, at the city of Rockford, this 3d day of February, 1858.

MORRIS B. DERRICK, *Cir. Clerk.*

Indorsed: Filed March 11th, 1858.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the third day of June, A. D. 1858, the parties by their solicitors, filed in said clerk's office the following stipulation, to wit:

U. S. cir. court, N. dist. of Ills.

SIMEON B. CHITTENDEN *et al.* vs. JOHN K. BREWSTER *et al.* } In chancery. 160.

SIMEON B. CHITTENDEN *et al.* vs. JOHN K. BREWSTER *et al.* } In chancery. 161.

AUSTIN SUMNER *et al.* vs. JOHN K. BREWSTER *et al.* } In chancery. 167.

It is hereby stipulated that the defts. in the above suits may file their answers in the first of the suits above named, and that the same may be used as their answers in the other suits, the same as though they had filed the same in each of the above-entitled suits.

Chicago, March 1st, 1858,

SMITH & DEWEY, *Sol'rs for Comp'ts.*

Indorsed: Filed June 3d, 1858.

WM. H. BRADLEY, *Cl'k.*

128 On this day, to wit, the twenty-fourth day of December, A. D. 1859, came said complainants, by their solicitors, and filed in said clerk's office their replication in said entitled cause, which said replication is in the words and figures following, to wit:

United States circuit court for the seventh circuit and northern district of Illinois.—Northern district of Illinois.

SIMEON B. CHITTENDEN *et al.* vs. JOHN K. BREWSTER *et al.* } In chancery.

The replication of the above-named complainants to the joint and several answer of John A. Clark and Daniel S. Brewster, two of the above-named defendants, these repliants saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants without this,

129 that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto,

confessed, and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

SMITH & DEWEY, *Comp't Sol'rs.*

Indorsed: Filed Dec. 24, 1859.

WM. H. BRADLEY, *Cl'k.*

130 On this day, to wit, the thirtieth day of October, A. D. 1862, in the record of the proceedings of said court in said cause is the following entry, to wit:

SIMEON B. CHITTENDEN, WALTER T. HATCH, Timothy P. Chapman, and Charles S. Smith, and Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root,
vs.
JOHN K. BREWSTER, JOSEPH BREWSTER, Daniel S. Brewster, John A. Clark, and William P. Malburn.
} In chancery.

Now come the complainants, by their solicitors, and it appearing satisfactorily to the court that the defendant, John K. Brewster, had been regularly served with process and had entered his appearance herein, but had failed to file his answer to the complainants' bill of complaint, agreeably to the rules and practice of this court, and he being now three times solemnly called comes not, but makes default: It is thereupon, on motion, considered by the court that his default be entered, and that the bill and the matters and things therein stated and charged be taken as confessed as to him.

131 On this day, to wit, the fifth day of November, A. D. 1862, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

SIMEON B. CHITTENDEN, WALTER T. HATCH, Timothy P. Chapman, Charles S. Smith, and Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root,
vs.
JOHN K. BREWSTER, JOSEPH BREWSTER, Daniel S. Brewster, John A. Clark, and William P. Malburn.
} In chancery.

Now come the parties, by their respective attorneys, and the complainants, by their solicitors, say they will no further prosecute their bill against the defendants, Joseph Brewster and William P. Malburn, but dismiss the same. It is thereupon considered by the court that the bill be dismissed as to said defendants, Joseph Brewster and William P. Malburn.

And now this cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz:

That complainants, Simeon B. Chittenden, Walter T. Hatch,
132 Timothy P. Chapman, and Charles S. Smith, recover against the defendant, John K. Brewster, the sum of one thousand eight hundred and ninety-six dollars and fifty-seven cents, with interest thereon at the rate of six per cent. per annum, from and after the sixteenth day of November, A. D. one thousand eight hundred and fifty-seven, together with the costs of this suit, to be taxed by the clerk of this court.

That complainants, Calvin Day, Elijah H. Owen, Horatio E. Day and George W. Root, recover against the defendant, John K. Brewster, the sum of five hundred and seventy-four dollars and sixteen cents, with interest thereon at the rate of six per centum per annum, from and after the thirtieth day of November, A. D. one thousand eight hundred and fifty-seven, with the costs of this suit, to be taxed by the clerk of this court.

That the assignment and transfer made by the said defendant, John K. Brewster, to the defendants, Daniel S. Brewster and John A. Clark, on the fourth day of November, A. D. one thousand eight hundred and fifty-seven, be, and the same is hereby, declared fraudulent and void, and that the same be, and is hereby, set aside as to the complainants in this suit.

That J. Tilden Moulton be, and he is hereby, appointed
133 receiver in said suit of all the goods and chattels, lands, tenements, securities, property effects and money, equitable interests, and choses in action of the said defendant, John K. Brewster; that said defendant, John K. Brewster, be, and he is hereby, directed to assign, transfer, convey, and deliver over, upon oath and in writing, to said receiver all the goods, chattels, lands, tenements, securities, property effects, money, equitable interests, and choses in action of and belonging to him, the said John K. Brewster, and all property, both real and personal, in which he now has any right or interest, upon two days' notice being given to him of this decree.

That said defendants, Daniel S. Brewster and John A. Clark, the assignees of said John K. Brewster, and each of them, be, and they and each of them are, hereby directed to assign, transfer and convey, and deliver over, upon oath and in writing, all the goods, chattels, lands, tenements, securities, property effects, equitable interests, choses in action, and money of the said John K. Brewster, assigned, transferred and delivered over to them under the said assignment, made by said John K. Brewster to them on said fourth day of November, A. D. eighteen hundred and forty-seven, and which have come into their or either of their hands, and were in their or either of their possession, or under their or either of their control, on
134 the fourth day of January, A. D. eighteen hundred and fifty-eight, (except such property and effects so assigned to them by John K. Brewster which they have, since service of process in this suit, transferred to James Mitchell, under the proceedings had in the circuit court for the county of Winnebago, State of Illinois, and stated in their answer filed in this suit,) upon two days, notice being given them of this decree.

That J. Tilden Moulton, receiver as aforesaid, be, and he is hereby,

directed to sell all the goods, chattels, lands, tenements, securities, property effects, equitable interests, and choses in action of the said John K. Brewster which may come into his hands or possession under this decree, and from the proceeds of such sale or sales, and money received from the said John K. Brewster, and the assignees, Daniel S. Brewster and John A. Clark, pay the amounts due the said complainants, in the order in which they are herein decreed to recover, and that he bring any balance there may be remaining, after paying said complainants the amounts decreed to be recovered by them, into this court.

That such receiver make such sale or sales aforesaid at public auction, after giving twenty days' public notice thereof according to law, and report his proceedings and the cost of said sale or
135 sales to this court.

That said complainants be at liberty to apply to this court from time to time for such further and other order and decree as may be necessary to enforce the order and decree herein made.

To which decree the complainants except, and from which they pray an appeal to the Supreme Court, which is granted, upon their entering into bond in the sum of five hundred dollars with E. S. Smith as security within ten days from this date.

On this day, to wit, the tenth day of November, A. D. 1862, came said complainants, and filed in said clerk's office their bond in said entitled cause, which said bond is in the words and figures following, to wit:

Know all men by these presents, that Simeon B. Chittenden, of New York city, State of New York, and Elijah H. Owen, of Hartford, State of Connecticut, as principals, and E. S. Smith, of Chicago, State of Illinois, as surety, are held and firmly bound unto John K. Brewster, Daniel S. Brewster, and John A. Clark, in the sum
136 of five hundred dollars, to be paid to the said John K. Brewster, Daniel S. Brewster, and John A. Clark, their executors or administrators. Sealed with our seals, and dated this fifth day of November, A. D. eighteen hundred and sixty-two.

Whereas Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root have prosecuted an appeal to the Supreme Court of the United States to reverse the decree entered in the circuit court of the United States of America for the eighth circuit and northern district of Illinois in a certain cause wherein the said Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root are complainants, and John K. Brewster, Daniel S. Brewster, and John A. Clark are respondents:

Now, therefore, the condition of this obligation is such, that if the said Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, and George W. Root shall prosecute their said appeal to effect, and answer all such damages and costs as shall be awarded against them,

then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

S. B. CHITTENDEN. [SEAL.]
E. H. OWEN. [SEAL.]
E. S. SMITH. [SEAL.]

137 Approved.

THOMAS DRUMMOND. [SEAL.]

Indorsed: Filed Nov. 10th.

WM. H. BRADLEY, *Clk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, William H. Bradley, clerk of the circuit court of the United States for the district aforesaid, hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court, on the chancery side thereof, in said entitled cause, wherein Simeon B. Chittenden and others are complainants, and John K. Brewster and others are defendants, as the same remain of record in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at my office in Chicago, in the district aforesaid, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

138 Supreme Court of the United States of America.

SIMEON B. CHITTENDEN, WALTER T. HATCH, TIMOTHY P. CHAPMAN, CHARLES S. SMITH, CALVIN DAY, ELIJAH H. OWEN, HORATIO E. DAY, GEORGE W. ROOT, appellants,
vs.
JOHN K. BREWSTER, DANIEL S. BREWSTER, JOHN A. CLARK, appellees.

Of the December term, A. D. 1862.—Appeal from the circuit court of the United States for the northern district of Illinois.

Assignment of errors.

And afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States of America, come the said Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, Calvin Day, Elijah H. Owen, Horatio E. Day, George W. Root, by E. S. Smith, their solicitor, and say that in the record and proceedings aforesaid, and also in giving the decree aforesaid, there is manifest error in this, to wit:

1st. The court erred in not giving to the appellants a decree
139 for the transfer by the defendants to the receiver of all the assigned property and effects of John K. Brewster remaining in the possession and control of John A. Clark and Daniel S. Brewster at the time of the filing of the bill and service of process upon them.

2d. The court erred in making the exception in the decree of the

property and effects which had been transferred by John A. Clark and Daniel S. Brewster to James Mitchell after the service of process upon them in this case, because of the proceedings had in the Winnebago county circuit court.

3d. The court erred in not treating the proceedings set up by John A. Clark and Daniel S. Brewster, in the Winnebago county circuit court, as null and void, and of no effect, to interfere with the lien acquired by the appellants prior to the date thereof.

And the said appellants pray that the decree and judgment aforesaid, for the errors aforesaid, in the records and proceedings aforesaid, may be reversed and corrected, and that they may be restored to all things which they have lost by occasion of the decree aforesaid, and that such order and decree may be made as this honorable court shall deem equitable.

E. S. SMITH,
Sol'r and Counsel for Appellants.

Filed Dec. 6, 1862.

SIMEON B. CHITTENDEN, et al., appellants,
vs.
JOHN K. BREWSTER, et al., appellees.

Appeal from Circuit Court of the United States for Northern District of Illinois.

THE appellants, on the 4th day of January, 1858, filed their bill of complainant against J. K. Brewster, Jos. Brewster, Daniel S. Brewster, John A. Clark, and Wm. P. Malburn, setting forth that the appellants, Simeon B. Chittenden, Walter T. Hatch, Timothy P. Chapman, Charles S. Smith, at the October term of the Circuit Court of the United States for the Northern District of Illinois, recovered a judgment against John K. Brewster for $1,896 57 damages and costs, upon which a *fi. fa.* issued December 21, 1857, and was returned *nulla bona*, December 23, 1857.

Also setting forth that the appellants, Calvin Day, Elijah H. Owens, Horatio E. Day, and George W. Root, at the same term of said court, recovered a judgment against John K. Brewster for $574 16 damages and costs, upon which a *fi. fa.* issued December 21, 1857, and was returned *nulla bona* December 23, 1857.

Also further setting forth, that John K. Brewster had in his possession equitable assets which ought to be applied to the satisfaction of said judgments.

Also setting forth, that said defendant, John K. Brewster, had made an assignment of his property to the defendants, to Daniel S. Brewster and John A. Clark, which the bill alleged was fraudulent and void. The bill was by consent dismissed as to Joseph Brewster and William P. Malburn, and the allegations in regard to them are omitted.

The bill prays for discovery, and that the assignment of John K. Brewster to Daniel S. Brewster and John A. Clark may be set aside, and that the property assigned, and the other equitable assets of John K. Brewster may be applied to the payment of the complainants' judgments for a receiver, &c.

Upon the filing of the bill subpœna was issued, which,

with a notice of an application for an injunction, was served on defendants January 5, 1858. On the 1st day of February, 1858, an injunction against John K. Brewster was issued restraining him from disposing of his property. On the 11th day of March, 1858, the defendants, John A. Clark and Daniel S. Breuster filed their answer, stating they had no knowledge of the recovery of the judgments in the bill mentioned, or of the alleged proceedings thereon. The answer admits that John K. Brewster made the assignment to the defendants, John A. Clark and Daniel S. Brewster, in the bill mentioned, but denies that the assignment was fraudulent or void.

The answer further sets forth, that since the filing of the bill in this cause, James Mitchell and others had filed their bill of complaint against said defendants in the Circuit Court of Winnebago County, and State of Illinois, praying for the appointment of a receiver to take said assigned into his care, and to carry out the trusts in said assignment mentioned; that upon a hearing of said bill and petition the State Court appointed James Mitchell receiver, who entered upon the duties of his office; and that the defendants, John A. Clark and Daniel S. Brewster, under an order of said court transferred and delivered to the receiver all of the assigned property in their hands setting forth a copy of the proceedings of the State Court.

Replication to defendant's answer filed Dec. 24, 1859.

Decree *pro confesso* against John K. Brewster, October 30, 1862.

On the 5th day of November, 1862, the cause was finally heard, and a decree rendered that the complainants recover against John K. Brewster the sums severally claimed by them; and the assignment of John K. Brewster to John A. Clark and Daniel S. Brewster was declared fraudulent and void, and set aside as to the complainants. J. Tilden Moulton was appointed a receiver; and the defendant, John K. Breuster, was directed to assign and transfer to such receiver all of his property, &c.

The defendants, John A. Clark and Daniel S. Brewster, were also directed to assign, convey, and deliver over to said

receiver, all the property, &c., which came to their hands, under said assignment, except such property and effects as they had transferred to James Mitchell, the receiver appointed by the State Court. From this decree the complainants appealed.

I.

There is no evidence in the record showing that appellants acquired a prior lien. It does not appear the appellants ever sued out executions upon their judgments or placed such executions in the hands of the Marshal, or had any return made thereon. The answer admits that the defendants had been informed that the complainants had obtained a judgment, but it does not admit that they had obtained the judgments mentioned in the bill of complainant; and the decree of the court below does not find that the allegations of the bill are true in regard to the obtaining of the judgments therein mentioned, or in regard to the alleged subsequent proceedings thereon.—See Record, pp. 15, 68.

The obtaining of a judgment, suing out of execution, and a return *nulla bona* are indispensable prerequisites to the establishment of a prior equitable lien.—Day *vs.* Washburne, 24 Howard, 353.

II.

If the appellants acquired a prior equitable lien by the filing of their bill of complaint, they lost the same by the superior diligence of the complainants in the State Court. The lien obtained by the filing of a creditor's bill is an inchoate one, which may be perfected by the appointment of a receiver, and may be displaced by the superior diligence of other creditors in perfecting similar liens.

It is urged that the court below should have treated the proceedings of the State Court as fraudulent and void; but it will be noticed that there was no allegation or proof of fraud.

III.

If the appellants had a superior lien upon the property in

the hands of the receiver appointed by the State Court, the proper mode of enforcing that lien was for the receiver of the court below to intervene in the State Court by petition, *pro interesse suo*, where the lien, when established, would have been recognized and duly enforced. Upon establishing the right of the receiver of the Court below to the property in the hands of the receiver of the State Court, in the mode indicated, the State Court would have ordered its officer to deliver the property over to the officer of the United States Court. The court below declared the assignment void, appointed a receiver, and compelled the defendant, John K. Brewster, to assign all his interest in the property. This was all the court could do; it could not order the assignees to deliver over property not in their hands, and which they had already delivered to the officer of the State Court under its order.—3 Daniells, Ch. Pr. 2057, 1984; 2 Daniells, Ch. Pr. 1314, 1269.

E. B. WASHBURNE,
Of Counsel for Appellees.

GIBSON BROTHERS, Printers, 271, Pa. Avenue, Washington, D. C.

IN THE

Supreme Court of the United States,

No. 198.

SIMEON B. CHITTENDEN, *et al.*
Appellants,
vs.
JOHN K. BREWSTER,
DANIEL S. BREWSTER,
JOHN A. CLARK, *et al.*
Appellees.
} **In Chancery.**

APPEAL FROM THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLANTS.

E. S. SMITH, *Att'y for Appellants.*

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK ST.
1864.

IN THE

SUPREME COURT OF THE UNITED STATES,

December Term, 1863.

SIMEON B. CHITTENDEN, *Et. Al.*,
Appellants,
vs.
JOHN K. BREWSTER, *Et. Al.*,
Appellees.
} **In Chancery.**

In Error to the Circuit Court of the United States, for the Northern District of Illinois.

E. S. SMITH,
Solicitor and Counsel for Appellants.

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1864.

STATEMENT OF CASE.

On the 4th day of January, 1858, the appellants filed their bill of complaint in the Circuit Court of the United States, for the Seventh Circuit, and Northern District of Illinois, against the appellees herein and others. Subpena was issued, returnable on the first Monday of March, then next, and on the 6th day of January, 1858, was served on all the defendants.

The bill shows the recovery of two judgments, in the United States Circuit Court, for the Northern District of Illinois, against the defendant, John K. Brewster; one in favor of the complainants, S. B. Chittenden & Co., on the 16th day of November, A. D. 1857, for $1,836.46 damages, and $60.11 costs; one in favor of the complainants, Day, Owen & Co., on the 30th day of November, 1857, for the sum of $538.76 damages, and $35.40 costs; the issuance of executions on both judgments, and the return by the marshal unsatisfied (folio 4 and 7, page 2 and 3 of record).

The bill also charges, that on the 4th day of November, 1857, the defendant, John K. Brewster, for the purpose of placing his property beyond the reach of the judgments mentioned in the bill, made a general assignment of his property, to the defendants, Daniel S. Brewster and John A. Clarke, for the benefit of creditors with preferences. The bill also charges that the assignment so made, is fraudulent and void, as to complainants, for the reason that by the terms of the assignment, the assignees were authorized to sell and dispose of the assigned property "*on such terms and "conditions and either for cash or upon credit, as, in their judg- "ment, may appear best and most for the interest of the parties con- "cerned*" (folio 15, page 6 of record).

The bill prayed, among other things, that the assignment be set aside, and decreed to be fraudulent and void as to creditors, and that the property so transferred, might be applied, by an order or decree of the court, to the satifaction of the complainant's judgment.

The defendant, John K. Brewster, made default. The defendants, Daniel S. Brewster and John A. Clarke, filed their joint and several answers, on the 11th day of March, 1858, in which they admit the execution of the assignment to them, on the 4th day of November, A. D. 1857, a copy of which is annexed, and made a part of the answer. They further admit, that the assignment, by its terms, authorizes them to dispose of the assigned property upon credit, and that on the 6th day of January, 1858, the date of service of process in this case, they were in possession of the property assigned, and continued in possession of the same, until the 2d day of February, then next (page 14 and 18 of record).

Defendants, Clarke and Brewster, the assignees, annex copy of the assignment to answer, also schedules of property assigned (pages 24 to 46 of record). The defendants, Clarke and Brewster, in their answer, aver that they took possession of the property assigned immediately, and proceeded to perform their duties as far as they were able to do (pages 21 and 22 of record).

The defendants, Daniel S. Brewster and John A. Clarke, alledge in their answer, that James Mitchell & Co. filed a bill against them, in the Circuit Court of Winnebago county, Illinois, and "prayed "the appointment of a receiver, to *take and carry out the trusts* "*created in and by said deed of assignment* by said John K. Brew- "ster to these defendants, and that upon a hearing of said bill and "petition, James Mitchell was duly appointed receiver, and has "entered upon his said office, and these defendants have paid over "and transferred, under the order of said court, to said James Mit- "chell, all the notes, accounts, and choses in action, assigned to "them and in their hands at the date of said appointment," a copy

of which bill, and proceedings thereto, is annexed and made a part of their answer (page 23 of record).

The bill of Mitchell and others, who were preferred creditors in the assignment, was filed in the Winnebago County Circuit Court, on the 1st day of February, 1858; the order appointing Mitchell receiver, was entered on the 2d day of February, 1858, and contained, among others, the following provision: "It is further ordered by the court *that the said James Mitchell shall proceed to dispose of said trust estate, and apply the proceeds thereof in the manner, and to the persons, and for the purposes set forth in the said deed of assigdment*" (pages 46 to 62 of record).

The bill of Michell and others, against the assignees, charge them with neglect of duty, and Mitchell was appointed by the court for the reason of that charge and complaint on the part of creditors (folio 92, page 48 of record).

Decree of Winnebago County Circuit Court is on pages 63 and 64 of record).

The cause went to a hearing upon the bill and answer of defendats, Daniel S. Brewster and John A. Clarke, January 10th, 1861, and afterwards, on the 5th of November, A. D. 1862, a decree was entered in said cause, against John K. Brewster, Daniel S. Brewster, and John A. Clarke, and the bill was dismissed as to the other defendants (folio 131, page 67 of record).

The decree declared the assignment executed November 4th, 1857, fraudulent and void, and set the same aside. It further ordered that J. Tilden Moulton be appointed receiver, and that the assignees pass over to Moulton, all the property in their hands on the 6th day of January, A. D. 1858, belonging to John K. Brewster, "*except such property and effects, so assigned to them by John K. Brewster, which they have, since service of process in this suit, transferred to James Mitchell, under the proceedings had in the*

"*Circuit Court for the county of Winnebago, State of Illinois*" (folio 133, page 68 of record).

Complainants thereupon excepted to that part of the decree making the exception. An appeal was prayed, upon the part of the complainants, and allowed on the 5th day of November, 1862.

Bond was duly filed.

The following are the errors assigned:

1. The court erred in not giving to the appellants a decree for the transfer by the defendants to the receiver, of all the assigned property and effects of John K. Brewster, remaining in the possession and control of John A. Clarke and Daniel Brewster, at the time of the filing of the bill and service of process upon them.

2. The court erred in making the exception in the decree, of the property and effects, which had been transferred by John A. Clarke and Daniel S. Brewster, to James Mitchell, after the service of process upon them in this case, because of the proceedings had in the Winnebago County Circuit Court.

3. The court erred in not treating the proceedings, set up by John A. Clarke and Daniel S. Brewster, in the Winnebago County Circuit Court, as null and void, and of no effect, to interfere with the lien acquired by the appellants prior to the date thereof.

APPELLANTS' POINTS AND AUTHORITIES.

The points made by the appellants are:

I.

By filing the bill and service of process, the court obtained jurisdiction of the parties, and also of the property, by acquiring a lien thereon, by which the appellants secured the right to enforce a sale of all the assigned property and effects, which remained in the hands of the assignees at the time of service of process.

II.

In proceedings in the Federal court, by bill or otherwise, when rights of creditors have attached to the property, no levy can be made upon the property thus placed in the jurisdiction of the Federal Court on process issuing from a State court; nor can any proceeding be had in the State court to interfere with the Federal Court, and take from its jurisdiction the property subject to the lien thus acquired.

III.

The circuit court having acquired juriction of the parties and property, should have decreed and compelled a transfer of all the property by the assignees to the receiver, and in default thereof, that the defendants, Clarke and Daniel S. Brewster, pay the amount of the decree, with costs of suit.

We submit a copy of section 36 of the statute of Illinois: Chap-

ter 21, section 36, page 142, volume 1 of Purple's Statutes of Illinois:

"Whenever an execution shall have been issued against the property of a defendant on a judgment at law or in equity, and shall have been returned unsatisfied in whole or in part, the party suing out such execution, may file a bill in chancery, against such defendant and any other person, to compel the discovery of any property or thing in action, belonging to the defendant; and if any property, money, or thing in action, due to him or held in trust for him, and to prevent the transfer of any such property, money, or thing in action, or the payment or delivery thereof to the defendant, except when such trust has been created by, or the fund so held in trust, has proceeded from, some other than the defendant himself."

To sustain the first point presented by the appellants, we submit the following authorities, for the consideration of the court:

FIRST as to lis pendens:

1 *Vernon's Reports*, 318;
Sugden on Vender's 495;
Murray vs *Ballou*, 1 John's Ch. Rep., 566;
Edgel vs *Haywood*, 3 Atk., 357;
Weed vs *Pierce*, 9 Cowen, 729;
Boynton vs. *Rawson*, Clark's Ch. Rep., 589;
Roberts vs. *Jackson*, 1 Wendell 486;
Gilman vs. *Hamilton*, 16 Ills., 225;
Lyle vs. *Bradford*, 7 Monroe, 112;
Lytle's Ex. vs. *Pope's Admr.*, 11 B. Mon., 297;
Weed vs. *Small*, 3 Sand. Ch. Rep., 275;
Harrington vs. *Harrington*, 27 Mis. (6 Jones) 560;
Allen vs. *P. & M. Bank*, 22 Ala., 793;
Goodwin vs. *McGhee*, 15 Ala., 232;
Chandron vs. *Magee*, 8 Ala., 570;
Jackson vs. *Dickerson*, 15 Johns, 309.

SECOND. Authorities considered in point to sustain the appellant's rights, and lien at the time of service of process:

McDermont vs. *Strong*, 4 John's Ch. R., 687.
Weed vs. *Pierce*, 4 Cowan, 728.
Beck vs. *Burdett*, 1 Paige, 305.
Eager vs. *Price*, 2 " 383.
Clarkson vs. *DePeyster*, 3 Paige, 320.
Bloodgood vs. *Clark*, 4 Paige, 574.
Corning vs. *White*, 2 Paige, 567.
Utica Ins. Co. vs. *Power*, 3 Paige, 365.
Wakeman vs. *Grover*, 4 Paige, 23.
Ames vs. *Blunt*, 5 Paige, 13.
Burall vs. *Leslie*, 6 Paige, 445.
Boynton vs. *Rawson*, Clark's Ch. R., 584.
Hadden vs. *Spader*, 20 Johns, 554, opinion of Justice PLATT and Chief Justice SPENCER.
Storm vs. *Waddell*, 2 Sandf. Ch. R., 519.
Exparte General Assignee. In re., Allen 1, N. Y.
Legal Observer, p. 115, opinion by Judge CONKLING.
Porter vs. *Williams et al.*, 5 How. Pr. R., 441.
Edmeston vs. *Lyle*, 1 Bage, 639.
Voorhies vs. *Seymour*, 26 Barbour, 570.
Fetter vs. *Cirode*, 4 B. Monroe, 482.
Chatauque Co. Bank vs. *White*, 2 Selden, 251.

The law of lis pendens we assume to be well settled, that filing a bill in a court of equity, and service of process is, notice to the world, of all the rights claimed by the complainant, as set up in his bill.

In 1 *Vernon's Reports*, p. 318, before referred to, it was held that, filing a bill and service of process, was notice to all persons, though the party lives never so remote.

Sugden on Vendors, p. 405, above referred to, also says that when the bill is filed, lis pendens begins from the service of subpena.

In the case of *Murray* vs. *Ballou*, 1 John's Ch. Reports, on page 576, Chancellor KENT says:

"The established rule is, that a lis pendens, duly prosecuted, is "notice to a purchaser, so as to affect and bind his interest by the "decree, and the lis pendens begins from the service of the sub- "pena, after the bill is filed. * * * * Without it, "(meaning the rule) as has been observed in some of the cases, a "man, upon the service of the subpena, might alienate his lands "and prevent the justice of the court. Its decree might be whol- "ly evaded.

We submit that we have shown from authority that the filing of the bill and the service of process in this case was notice to the world of all the bill contained, and most certainly notice to Clark and Daniel S. Brewster, the assignees, who were personally served with process. It was notice to Mitchell, Putnam, Richardson and Page, who were creditors of John K. Brewster, and named in the assignment, which instrument was specially mentioned in the bill of complaint. The rights and interests of Mitchell & Co. were bound by the bill as much by making the assignees parties, as they would have been if they had all been made defendants.

We think the record and proceedings fully show actual notice to Mitchell & Co. At any rate, there is evidence sufficient in our opinion to satisfy the court that they must have had notice of the bill, or why did they get up the proceedings at Rockford, except to try and defeat the jurisdiction of the Federal court.

Let us examine for a moment the evidence in this case, to show notice to Mitchell & Co.

It will be remembered that the process was served on Clark and Brewster, the assignees, at Freeport, the place of business of

Mitchell & Co., on the 6th of January, 1858, which writ required the defendants to appear on the first Monday of February then next (page 12 of record), and that on February 1st, 1858, Mr. Beckwith entered the appearance of the defendants, and on the same day Mitchell and others filed their bill in the Winnebago County Circuit Court against Clark and Brewster, the assignees, charging neglect of duty as assignees, and prayed for the appointment of a receiver to carry out and execute the trusts in the assignment—Mitchell & Co. being preferred creditors named in the assignment.

On the same day, February 1, 1858, the assignees appeared, accepted the service of notice, and by their solicitor consented to an immediate hearing of the case, and on the next day an order was made appointing Mitchell receiver, with powers to carry out the trusts.

These parties all resided in Freeport, in the county of Stephenson, and must have went to Winnebago county voluntarily, for the purpose of getting up the proceedings there, which proceedings show a mutual understanding and agreement between the parties (pages 46 to 65 inclusive of record).

On the eleventh day of March, 1858, Clark and Daniel S. Brewster, the assignees, filed their answer in this suit, in which they stated on oath that they immediately took possession of the property assigned, and from that time engaged in arranging the notes and accounts assigned, and in collecting and reducing the same into money as they were able so to do (pages 21 and 22 of record).

We submit, if the court please, that if these defendants testified to the truth in their answer, the bill of Mitchell & Co. was false in charging neglect of duty. Clark was at the time the brother-in-law of Mitchell, and his confidential adviser, and there could not have been any cause for their removal as assignees.

The truth is, they expected to oust the Federal court of jurisdiction of the property by putting the same in the hands of a receiver appoint-

ed by the State court, upon the ground of conflict of jurisdiction, and in fact did not get up the proceedings for any other purpose. The facts connected with the proceedings fully show such to have been their object and intention, and such being the fact, the proceedings were fraudulent and void as to the complainants in this suit, and should be so held by this honorable court on this appeal.

We think the proceedings in the Winnebago County Circuit Court were void by the provisions of the statute which provides that when the suit may affect real estate, it shall be brought in the county where the land is situated, or the greater part thereof. Chap. 21, sec. 2, vol. 1, R. S., page 139.

In this case there was none of the real estate situated in the county of Winnebago. Most of it was the county of Stephenson. So it appears by the bill and assignment, which was a part of the bill (pages 51 to 55 of record).

The section of the statute referred to is in the following words:

"The mode of commencing suits in equity, shall be by filing a "bill, setting forth the nature of the complaint, with the clerk of "the circuit court of the county within whose jurisdiction the de- "fendants, or the major part of them, if inhabitants of this State, "reside; or if the suit may affect real estate, in the county where "the same or a greater part thereof shall be situated; if the de- "fendants are all non-residents, then with the clerk of the circuit "court of any county. Bills for injunctions to stay proceedings "at law shall be filed in the office of the circuit court of the coun- "ty in which the record of the proceedings had, shall be."

This statute was in force at the time, and is now the law of the State, and is imperative in its terms, and is the only statute law giving jurisdiction; and when the subject matter of the suit in any way affects real estate, then the court has no jurisdiction whatever unless the suit be in the county where the greater part of the land is situated. The question arises, how did the suit affect real estate?

We say it did; and the record shows that Clark and Brewster held the title to the real estate, and under the order had to convey to Mitchell the real estate assigned, and did do so. Mitchell, in fact, could not carry out the trusts without the title to the property. To affect real estate it is not necessary that the title should be in dispute in any way, and that question is to be determined in the suit. The suit affects real estate whenever the object of the bill is to reach it, and make a sale by which it is to be appropriated for a use in conflict with other claimants.

It may be said that the defendants submitted to the jurisdiction and did not object, and therefore the court had jurisdiction. In answer to that we say, that, true they did accept service of notice, but they did not file any plea or answer to the bill. Their counsel consented to go into an immediate hearing of their case. This, we say, did not confer jurisdiction; and besides, the parties could not consent and confer jurisdiction. They were trustees, and could do no act to the prejudice of any one. Where the court has no jurisdiction of the subject matter of the suit, the consent of a party having the power to consent, will not confer jurisdiction. The proceedings, therefore, were a nullity; the decree is absolutely void, and for this reason the Circuit Court for the Northern District of Illinois should have treated the proceedings as void.

By the statute, the suit should have been instituted in Stephenson county, where all the defendants resided. We think the bill, copy of assignment, and the proceedings in Winnebago county show that the complainants and defendants resided at Freeport (page 46 of record). The bill in this case shows that Clark and John K. and Daniel S. Brewster resided in Stephenson county (page 2 of record). The answer of Clark and Brewster was sworn to in Stephenson county (page 24 of record). Take all this proof together, it sufficiently appears that the statute of Illinois, sec. 2, chap. 21, was not, in any one of the requirements, complied with.

The proof before the Winnebago County Circuit Court sufficiently showed that the court had no jurisdiction, and that by the con-

sent of the parties the court was deceived, and thereby a fraud was perpetrated upon the court as well as upon the appellants.

In the case of *Enos* v. *Hunter*, 4 Gilman Rep., 217, it was held that, the meaning of the word "affect," as used in this statute, was "to act upon and in compelling a conveyance of real estate." In that case the court was called upon to act upon the party who who was within its jurisdiction, so that the authority is simply upon the meaning of the word "affect," as now in the statute giving jurisdiction; but it clearly appears that the court considered that the statute must govern as to where the suit should be commenced, and that if the statute was not complied with, the court had no jurisdiction. So in the case of *Ralston* v. *Hughes*, 13 Illinois, 470, it seems that the court considers that the statute must be complied with or there is no jurisdiction. It is no departure from the rule, to hold that the court has jurisdiction where part of the land is in another county in case where part is situated in the county where the suit is pending; because where the court has jurisdiction of the parties and a part of the property, where a decree must be made as to the whole, then the jurisdiction of foreclosure of the whole follows. We see, therefore, that this case treats of a foreclosure of a mortgage, asking a sale of the lands to pay the debt as one affecting real estate within the statute. It must appear from the authorities, as well as the statute, that the bill of Mitchell & Co., asking an order and decree for the conveyance of the Brewster lands, that they might be sold under the trust to pay the debts, is within the statute, and the court in Winnebago county had no jurisdiction of the parties nor of the suit.

There is one other case, *Richards* v. *Hyde*, 21 Ill. Rep., p. 640, where the court held that the Circuit Court of Cook county had no jurisdiction in chancery to give aid to an execution issued from that county to the sheriff of Winnebago county, to remove a claim upon the title to lands taken on execution before a sale was made, because the land was not in the county where the suit was brought.

In the case of *Aiken* v. *Lloyd*, 28 Ill. Rep., 332, we think the question as to jurisdiction may be considered settled. It seems that the rule is different in suits at law, as the statute contains the additional words, "or may be found;" so that the ruling of courts in cases at law do not apply to chancery suits, for the reason, at law the rule is a personal privilege, which the party may wave, or does wave, if not pleaded.

Kenney v. *Greer*, 13 Ills., 432.

This case fully presents the law and the several decisions upon the question of jurisdiction at law, and with the other case, 28 Ills., 331, we must conclude, from authority, that in chancery the rule is as we contend. If the defendants had been sued in this case in their own right instead of in the capacity of trustees, representing others, and the bill did not affect real estate, then there might be some ground for an argument that the defendants might consent to be sued in another county from that where they resided. But in chancery cases, the court cannot take jurisdiction by consent. It is not a personal privilege which the defendant can wave in chancery. The statute fixes the facts, which must exist before jurisdiction in chancery can be entertained of a suit.

We submit, if the court please, that we have fully shown that Mitchell & Co. had notice, both by the bill and in fact, of the suit by the appellant and of all that the bill contained; and we also submit, that we have shown that the proceedings had by Mitchell & Co., were without authority of law, and that Mitchell & Co. did not, in law, obtain possession or title to any portion of the estate in question. Having shown such to be the law of the case, we will now proceed to show that the appellants had a lien upon the property, and had a right to enforce it, in the Circuit Court for the Northern District of Illinois, as there claimed, upon the hearing of the case. We will first refer to the several authorities in reference to the liens and rights acquired by judgment creditors, upon filing bill and service of process, as held by the courts of this country; and if we succeed in showing that a lien and right did attach, by

the filing of the bill and service of process, as we claimed there, we shall do all that is necessary for us to do to obtain such an order and decree, as claimed by us, should have been rendered in the court below.

In the case of *McDermot* v. *Strong*, 4 Johnson Ch. Rep., before referred to, which was a bill of discovery by a judgment creditor, the Chancellor says on page 690, on referring to the case of *Bayard* v. *Hoffman*, 4 John's Ch. Rep., 45 D:

"The cases were examined, touching the power of this court to "enable a creditor to reach trust property beyond the reach of an "execution at law, and I concluded that the court had, and ought "to have this power. But this case stands on stronger ground "than if it rested merely on the general jurisdiction of this court "upon residuary trust interests in chattels, for the plaintiffs come "in the character of execution creditors, and have thereby ac- "quired, by means of their executions at law, what this court re- "gards as a legal preference, or lien, on the property so placed in "trust. * * * It was not in the power of the debtor to withdraw "that surplus from the lien so acquired, in the view of this court, "by the execution. Admitting that the plaintiffs had acquired, by "their executions at law, a legal preference to the assistance of this "court, (and none but execution creditors at law are entitled to "that assistance,) that preference ought not, in justice, to be taken "away. Though it be the favorite policy of this court to distribute "assets equally among creditors, *pari pasu*, yet, whenever a judicial "preference has been established by the superior diligence of any "creditor, that preference is always preserved in the distribution "of assets by this court."

In the case of *Beck* v. *Burdett*, 1 Paige, above referred to, being a judgment creditor's bill, the court, on page 308, says:

"There are two classes of cases, where a plaintiff is permitted "to come into this court for relief, after he has proceeded to judg- "ment and execution at law, without obtaining satisfaction of his

" debt. In one case, the issuing of the execution gives to the plain-
" tiff a lien upon the property, but he is compelled to come here
" for the purpose of removing some obstructions, fraudulent or in-
" equitably interposed to prevent a sale on the execution. In the
" other the plaintiff comes here to obtain satisfaction of his debt out
" of property of the defendant, which cannot be reached by exe-
" cution at law. In the latter case, his right to relief here, depends
" upon the fact of his having exhausted his legal remedies, with-
" out being able to obtain satisfaction of his judgment. In the
" first case, the plaintiff may come into this court for relief imme-
" diately after he has obtained a lien upon the property, by issuing
" of an execution to the sheriff of the county, where the same is
" situated; the obstruction being removed, he may proceed to
" enforce the execution, by a sale of the property, although an
" actual levy is probably necessary to enable him to hold the
" property against other execution creditors, or *bona fide* purchas-
" ers."

" *Angel* v. *Draper*, 1 Vern. 399, and *Shirley* v. *Watts*, 3 Atk.,
" 200, are cases of this description. In the first, a fraudulent as-
" signment was interposed, to prevent a sale of the defendant's
" property on execution, and in the last case it became necessary
" to redeem for a term of years in a leasehold property, from the
" lien of a prior mortgage. In both these cases, the plaintiffs were
" allowed to come into equity for relief, before the executions were
" returned unsatisfied. *McDermot* v. *Strony*, 4 John's Ch. Rep.,
" 587, belongs to the other class of cases, for, although an attempt
" was made to levy the execution upon the defendant's interest in
" the vessel assigned, it was clear he had no interest, which was a
" proper subject of seizure and sale on execution. The issuing of
" an execution, or even a formal levy, can create no lien upon a
" chose in action, or a mere equitable interest in personal property,
" which is not liable to be sold on execution. In such cases, the
" actual return of the execution unsatisfied, is necessary to give
" this court jurisdiction to decree satisfaction out of the equitable
" property of the defendant. Such is the construction recently

" adopted by the legislature, in such cases. (R. S., part 3, ch. 1, " tit. 2, sec. 38.) And a similar principle is adopted in that part " of the revised statutes which enables creditors to reach the equi- " table interest of persons holding lands, under contracts for the " purchase thereof. (R. S., part 2, ch. 1, tit. 4, sec. 4.) In all " these cases, where the property is not liable to an execution at " law, the plaintiff obtains no lien upon the property or fund, by " the issuing or return of the execution. But it is the filing of the " bill in equity, after the return of the execution at law, which " gives the plaintiff a specific lien. Per Lord HARDWICKE, in *Egell* " v. *Haywood*. 3 Atk., Rep., 357."

In the case of *Ames* v. *Blunt*, 5 Paige, 19, the Vice Chancellor, in delivering the opinion, says:

" And so far as the trusts created by that assignment were not " executed at the time of filing the bill, the property, or any of its " proceeds, then remaining in the hands of the assignees, must be " considered as belonging to the assignors; and from that moment " liable to satify the debt owing to the complainants in preference " to all others, by reason of their superior diligence in prosecuting " to judgment and execution."

Let us apply these rules of law to the case under consideration, and we find that the trusts created by the assignment of Brewster to Clarke and Brewster not being executed, the property in the hands of the assignees, not disposed of, became liable to be taken by the court, through its receiver, and sold to satisfy the judgments. The lien and right of the appellants became fixed upon filing the bill and service of process upon the trustees, and no proceedings in a State court could deprive the appellants of this right.

In the case of *Boynton* v. *Rawson*, Clarke's Ch. Rep., which was a judgment creditor's bill, the court say, at page 588:

" The order of the liens of judgments, executions, and creditor's " bills seem to be well understood. In judgments, priority is given

" to the age of the docket in executions, to priority of delivery to " the sheriff and levy, and in creditors bills, to priority of filing " the bill or commencement of the suit. In pursuing the remedy " in this court, the vigilant is favored, and the judgment creditor, " who first exhausts his remedy at law, by procuring an execution " to be returned unsatisfied, and files his bill in this court to pur- " sue and hunt out the equitable or concealed assets of the judg- " ment debtor, will ever, though he be the youngest in judgment, " and the last in execution, if he comes here first, have here in this " court priority over all the others as the reward of his diligence. " This is an undoubted and undisputed proposition. Chancellor " WALWORTH, in *Cuming* v. *White*, 2 Paige, 568, says also, that a " creditor's bill, under the revised statutes, operates as an attach- " ment upon property which can be levied upon by law.

" The court further say, on pages 590 and 591, the *litis pendentis* " thus perfected by the service of process, destroys the vendible " power of the defendant over the subject matter of the litigation, " or at least rendered the exercise of such power subject to the just " claims of the complainant in the pending suit. For purposes of " wise public policy, it had the effect of notice to even strangers " to the litigation.

" The statute only affirmed a previously well recognized ground " of jurisdiction in this court, and was passed probably because " there was, or appeared to be, some apparent conflict in former " decisions. It introduces no new rule, either as to principle or " practice. It gives no new lien; and when the courts say that a " creditor's bill, filed under it, is a lien upon the property, which " cannot be levied upon at law, they only affirm anciently estab- " lished principles, and mean to declare that in this, as in all other " cases, the party who is first in this court with a pending suit, " shall first reap the reward of his diligence."

It seems clear from this authority, as well as from the statute, that the lien does attach the moment the process is served. The

Chancellor thought that the law in chancery, without the statute in such cases, gave the same rights and liens; that the statute only affirmed a previously well recognized ground of jurisdiction.

Section 36 of our statute declares that whenever an execution shall have been issued on a judgment, at law or in equity, and shall have been returned unsatisfied, the party may file a bill in chancery to compel a discovery of any property, etc. Now, if the court please, we assume that this provision of law must necessarily give a lien upon the property, and a right which the court taking jurisdiction must enforce to the full extent to give satisfaction. It is just as imperative and effectual as the statute giving a judgment lien upon lands, or the lien of an execution when in the hands of the officer upon personal property without a levy. Parties to the suit, and all other parties, are bound by the notice, and cannot defeat the lien and right by taking possession of the property in any way, either with or without process of law; nor can another jurisdiction in any way legally interfere with the property, or excuse the defendants in refusing to deliver the property to a receiver; nor can another jurisdiction absolve the parties from the liability to account and pay over the proceeds of the property.

In the case of *Porter* v. *Williams, et al.*, 5 How Pr. Rep., 5, by Justice HARRIS, on page 443, says:

"But I do not understand that an assignment to the receiver is "necessary to pass the title of the judgment debtor. * * * * "The commencement of a suit to reach equitable assets, *has the* "*same effect in creating a lien as a levy upon personal property by* "*virtue of an execution.* * * * * It was never held that such "an assignment was necessary to divest his title."

In the case of exparte *General Assignee in re*, Allen, 1 N. Y. Legal Observer, Judge CONKLING, at page 117, says:

"The only question is, at what stage of the proceedings does it "(the lien) attach. And upon this point the decisions of the courts

" appear to me to leave no room for doubt. It has been repeatedly " decided that such lien is acquired at the commencement of the " suit, that is to say, by the filing of the bill and the service of a " subpena. It is sometimes called a preference, sometimes a prior- " ity, sometimes simply a lien, and sometimes a specific lien, and " it has uniformly been held to prevail over any subsequent volun- " tary assignment by the debtor. * * * * 2 Paige, 333, *ib.* 567, 20 " Johns. 554. 4 Johns. Ch. Rep. 687. *Haydin* v. *Bucklin et al.*, 9 " Paige, 512, (recently decided by the Chancellor,) in which it is " decided that the lien is not created by the mere filing of the bill " alone, but that the service of a subpena is also necessary. * * * " My conclusion, then is, that by the institution and diligent prose- " cution of a suit by a creditor's bill, without collusion with the de- " fendant and in good faith, the complainant acquires a lien on the " property of defendant. * * * * A suit by creditor's bill, in " which the complainant is seeking not to establish, for the first time, " a claim against the defendant, but rather to obtain satisfaction of " a claim already established, is a resort to a court of chancery for " the discovery and application of the defendant's property, in con- " formity with the judgment of a court of law already pro- " nounced."

In the case of *Hadden* v. *Spader*, 20 Johns. 554, above referred to, we refer the court to the opinion of Justices WOODWORTH and PLATT, Chief Justice SPENCER concurring with Justice WOODWORTH, commencing on page 562.

Storm v. *Waddell*, 2 Sand. Ch. Rep., 494, is a case which, in the language of Chancellor KENT, 1 Kent's Com., 247, " is distinguish- " ed for its learning and ability, and its logical vindication of the " doctrine."

" As I am constrained to differ from the Judge of the Southern " District, it is due to the high regard which I entertain for him, " that I should say I think his decision is made under an erroneous " impression in respect of creditor's suits, which have grown up

" since he left the bar, and which his judicial career has never " brought him into direct contact.

" Thus, although *until the property of the debtor is discovered*, " *the lien must*, as he says, *be apparently floating and in abeyance*, " it is in this respect no different from the lien of a judgment " upon lands or an execution upon goods, until such lands or goods " are discovered. But like the latter, when levied, and unlike the " judgment, the lien by the creditors' suit, becomes specific upon " such assets as are discovered. It is conclusive to my mind, that " the right thus acquired by the creditor is just as certain and " effectual upon the effects discovered as a mortgage or judgment " is upon the lands thereby incumbered."

The Vice-Chancellor, in this opinion, considers the doctrine of lien, in such cases, that we can do no better than to give a portion of the opinion, and ask the court to examine the case, as we consider it one decisive of the question. We commence on page 512:

" I may, therefore, assume that by the law of this state, as settled " more than twenty years before this case arose, an unsatisfied exe- " cution creditor had a right to file a bill, in this court, to compel " payment of his debt out of the equitable interests and things in " action of the judgment debtor.

" I will now endeavor to show what is the effect of such a bill, " when filed and duly prosecuted. Before filing it, the creditor " must have obtained a judgment or a decree for the payment of " money, issued his execution against both the real and personal " property of his debtor, and had it actually returned and filed. And " he must state in his bill, under oath, that the sum claimed upon " his judgment or decree, is due to him, over and above all claims " of the debtor by way of offset or otherwise. This makes a case, " which leaves little room for contingency or uncertainty in the re- " sult of the suit, so far as the complainants are concerned. His " course of action must be upon the records of some court of law, " which, of themselves, are evidence of the debt.

"Upon filing the bill, an injunction is taken out and served with "the subpena to answer, restraining the debtor from parting with "any of his property or effects till the further order of the court. "And, for the better protection of the property and its convertion "into money, a receiver is speedily appointed, who, under the order "of the court, is vested with all such property, (or with sufficient "specific portions of it, to pay the complainant's debt and costs, and "all prior claims upon the same), and the debtor is compelled to "assign and deliver such property to the receiver, under direction "of a master of the court.

"Unless the defendant can make a defence on some one of the "very narrow grounds left open to him, the decree presently en- "sues, which directs the receiver to pay to the complainant, out of "the funds in his hands, the judgment, with interest, and the "costs of the suit.

"If there are several creditor's suits, each complainant is paid "according to his priority, as ascertained by the time of the filing "of the respective bills and serving the process to answer.

"This is an epitome of the course of proceeding; without regard "to the injunction, the property of the defendant is subjected to "the suit, whereever it may be, if the receiver can lay hold of it, "or the complainant can reach it by the decree. The injunction, "when served, prevents the debtor from putting it away or squan- "dering it.

"The suit does not affect property acquired by the debtor after "its commencement. A supplemental bill, or a proceeding of the "like nature, is necessary to subject such property to the debt.

"A receiver is a convenient and important, but not indispensable, "part of the proceeding. The effects locked up, as it were, in the "hands of the debtor, by the injunction, may be decreed to be de- "livered to the complainant, or sold by a master, and applied in sat- "isfaction of the debt and costs.

"No voluntary assignment of the debtor can impair the com-
" plainant's right; nor any intervening claim of other creditors.

"I speak in this outline, of equitable interests and things in ac-
" tion. Other personal property will be noted hereafter; and as
" to lands, I need only say, that the court acts upon the rents and
" profits, where the legal title, or the right to the possession, is in the
" debtor.

"It is conclusive to my mind, that the right, thus acquired by
" the creditor, is a charge upon the things in action which the debtor
" had at the commencement of the suit. It is so far contingent
" that it may possibly be defeated by the event of the suit; although,
" in this respect, the result is immeasurably more certain than in
" the suits, by attachment, in our sister States, for the collection of
" ordinary debts. And, except on this contingency, it is an absolute
" claim, to be divested only on satisfaction of the debt and the costs
" of the suit. It is just as certain and effectual, upon the effects
" discovered, as a mortgage or a judgment is upon the lands thereby
" encumbered.

"If I a mright in this result, Chester & Co. had a lien or security
" upon the property in question, which was within the proviso of
" the bankrupt act.

"This conclusion is strongly fortified by the course of decisions
" in this State, and the language of our equity judges.

"In *McDermot* v. *Strong*, 4 J. C. R., 687, the right was upheld
" as a lien upon equitable interest sought by the bill.

"The argument of the appellant's counsel in *Hadden* v. *Spader*,
" was upon the ground that the creditor *must establish a lien.*

"In *Weed* v. *Pierce*, 9 Cowen, 728, 729, Chancellor WALWORTH
" held that the creditor in a bill of this kind acquired a specific
" lien upon the fund by the commencement of his suit.

" In *Beck* v. *Burdett*, 1 Paige, 305, 309, he declared his opinion, " that the filing of a bill, after the return of an execution at law, " gave to the plaintiff a specific lien on the fund or property not " liable to execution at law, but the execution not having been re- " turned in that case when the bill was filed, the Chancellor dis- " missed the suit.

" In *Edmeston* v. *Lyde*, 1 ibid, 639, 640, the same opinion is re- " peated by the Chancellor.

" The foregoing cases were before the revised statutes.

" In *Eager* v. *Price*, 2 Paige 333, 338, Chancellor WALWORTH " held that, by filing a judgment creditor's bill, the creditor acquired " a specific lien on the property which the debtor had at the com- " mencement of the suit, but that a supplemental bill was necessa- " sary to obtain a lien upon after acquired property of the debtor.

" In *Corning* v. *White*, 2 ibid, 567, the debtor set up in his an- " swer that there were other unsatisfied execution creditors. The " Chancellor overruled the defence, and held that the creditor who " first files his bill obtains a preference. He says: 'The filing of " the bill here, under the provisions of the revised statutes, operates " as an attachment of property which cannot be levied on at law. " It gives the vigilant creditor a right to a priority in payment, and " the creditor who next files his bill will have a second lien. An " assignment under the insolvent acts, after the commencement of " the suit only gives to the assignee a right to the surplus after the " payment of complainant's debt.'

" In *Clarkson* v. *DePeyster*, 3 Paige, 320, the Chancellor, on " holding that a creditor might file a bill of this description, found- " ed on a decree in equity, again speaks of the right acquired under " it as an equitable lien.

" In the *Utica Insurance Company* v. *Power*, 3 ibid, 365, the " Chancellor declared that by the creditor's suit, the complainants " acquired a *specific lien* on the demand in question.

"*Bloodgood* v. *Clark*, 4 Paige, 574, was a case upon the appoint-
" ment of a receiver, in which the Chancellor, in support of a speedy
" appointment, says, in effect, that the sworn bill of the complain-
" ant shows presumptively that he has an equitable right to all
" the funds and property of the defendant to satisfy his debt.

" In *Ames* v. *Blunt*, 5 Paige, 13, 24, he again speaks of the bill
" as giving to the complainant a lien on the property in contro-
" versy.

" In *Burrall* v. *Leslie*, 6 ibid, 445, where eight creditor's bills
" had been filed against the same judgment debtors, before the
" Chancellor and different Vice Chancellors, there had been a re-
" ference to a Master, under the Chancellor's order to settle the
" creditor's priorities, and they were reported to be entitled in the
" order of their respective suits. The Chancellor made a decree
" accordingly.

" This case, with *Corning* v. *White*, shows that the lien obtained
" by these bills is not a mere form of words, or operative only
" against the debtor. As between the creditors, it overrules the
" equitable principles of equality in thus rewarding superior vigi-
" lance.

" In *Lansing* v. *Whitbeck*, 7 Paige, 364, which was much relied on
" by the counsel for the assignee, as showing an inconsistency in the
" doctrine contended for, the Chancellor held that in regard to chattels
" liable to execution at law, the title of the defendant was equitably
" divested by an order for its sequestration, or for the appointment
" of a receiver; and that, although by the creditor's bill the com-
" plainant acquired an equitable lien thereon, yet, before such or-
" der, that lien would not be protected against the legal right ob-
" tained to it by another creditor who levied upon it an execution
" at law. The same doctrine as to the force of such a levy is re-
" peated in *Storm* v. *Badger*, 8 ibid, 130. Whatever may be the
" true grounds of the rule, it does not affect the force of the lien

" of a creditor's suit upon equitable interests and things in action. " In the absence of an authoratative exposition of the reasons, I " submit that the decision may be upheld on the following: The " object of these suits is to remedy the defects of legal process in " the collection of debts. There is no difficulty in obtaining satis- " faction out of the chattels of the debtor in ordinary cases by sale " on execution. And the creditor who first levies his execution on " such chattels is entitled to a priority by his greater vigilance. " The effecting of such a levy indicates that the remedy at law " was not imperfect, and as that is the principal remedy, and the " one in equity was ancillary, the former should take precedence " so long as the possession and title remain in the debtor. But " when a proceeding in equity, by an order for a receiver or other- " wise has been made, what is equivalent to an actual levy in be- " half of the suitor in this court, he is then the vigilant creditor, and " obtains the prior lien.

" The case of *Grosvenor* v. *Allen*, 9 Paige, 74, arose under the " statute which subjects the interest of persons holding contracts " for the purchase of lands to the same proceeding in this court, as " the creditor's suit upon an execution being returned unsatisfied " (1 R. S., 746, sec. 4, 5). Nothing is said in the statute relative " to priority or lien. The Chancellor decided that neither the judg- " ment or execution constituted a lien upon the debtor's interest " under such a contract, but he says that the commencement of a " suit in this court under the statute would give to the creditor an " equitable lien thereon.

" In *Lentilhon* v. *Moffat*, 1 Edw. Ch. R., 451, 466, Vice Chan- " cellor McCoun said the complainants had 'acquired a lien to the " amount of their judgments' by their creditor's suit, which he " was then deciding.

" In *Tuthill* v. *Supton*, 1 ibid, 564, in denying a motion of the " defendant to be permitted to use a portion of his effects in order

" to defend the creditors suit, the Vice Chancellor said: 'The com-
" plainant has acquired a *prima facie lien* on this money, and the
" defendant must rely upon his subsequent earnings for the means
" of making his defence.'

" In *Albany City Bank* v. *Schermerhorn*, 1 Clarke's Ch. R., 297,
" Vice Chancellor WHITTLESEY held that the filing of a creditor's
" bill created a lien upon the things in action and equitable assets
" of judgment debtor. In *Boynton* v. *Rawson*, 1 ibid, 584, 589,
" 594, 595, 596, V. C. WHITTLESEY repeated the doctrine that the
" creditor's suit creates such a *lien*, and decided that as between
" the different creditor's suits, the one in which the subpena to an-
" swer is first served has priority.

" Certain cases in our own courts were mentioned as containing
" different doctrine, to which I will now refer. *White* v. *Carpen-*
" *ter*, 3 Paige, 217, 242, &c., was not a creditor's suit; and the
" point of the decision was that an equitable lien on specific prop-
" erty has preference over the general lien of a subsequent judg-
" ment.

" The Chancellor's expression in *Osborn* v. *Heyer*, 2 Paige, 343,
" merely show that although the receiver obtains the assets in a
" creditor's suit, it may turn out that there are prior equitable
" claims which are paramount to those of such creditor. *Lansing* v.
" *Easton*, 7 ibid, 364, I have already mentioned.

" In *Sylvester* v. *Reed*, 3 Edw. Ch. R., 296, and *Mathews* v.
" *Neilson*, 3 ibid, 346, the Vice Chancellor refused to revive a cred-
" itor's suit against the administrators on the death of the debtor, on
" the ground that the statute regulating the distribution of the es-
" tates of decedents requires the payment of all judgments alike,
" without preference. At the same time, the learned judge ex-
" pressly declared that the creditors suit created an equitable lien
" upon the property of the debtor. But he supposed that such a
" lien is not entitled to the same consideration under the statute of

" distribution as a lien at law, accompanied by possession. With-
" out discussing that position, it suffices to say that the Vice Chan-
" cellor treated the creditor's right as being a lien. And in *Smith*
" v. *Bleecker*, decided by him since the causes before me were
" heard (M. S. May 27th, 1845), he overruled a plea of a bankrupt's
" discharge and assignment in a creditor's suit, where the petition
" in bankruptcy preceded a few days the filing of the bill. I can
" only speak from a newspaper report of the decision. If that be
" correct, the V. C. held that the creditor acquired by his suit a
" lien in equity, which could not be divested by the subsequent de-
" cree in bankruptcy; and that the latter took effect from its entry,
" and not by relation from the time of filing the petition in bank-
" ruptcy.

" In the United States Courts within this State, we have conflict-
" ing decisions on the question.

" In *Exparte the General Assignee In re. Allen*, and several oth-
" ers, bankrupts (reported in 1 N. Y. Legal Observer, 115, and 5
" Law Reporter, 362), Judge CONKLING, of the Northern District,
" decided that by the institution and diligent prosecution of a suit
" by a creditor's bill, the complainant acquirrd a lien on the debt-
" or's property, which was not divested by a decree of bankruptcy,
" entered on a petition filed after the commencement of such
" suit.

" The opinion of the learned district judge is familliar to the profession, and I need not say more of it than that it is distinguished for its directness and ability, and is to my mind conclusive.

" On the other hand, Judge BETTS, of the Southern District, a
" jurist of more experience, and certainly no less learning than the
" other, and whose judgments have always commanded the entire re-
" spect and general assent of the bar, decided directly the contrary
" in *Ex parte Waddell the General Assiynee In re. Coster*, 1 N. Y.
" Leg. Obs., 53. The petition was filed by Coster before the com-

" mencement of the creditor's suit, but before the order for a re-
" ceiver.

" As I am constrained to differ from the judge of the Southern
" District, it is due to the high regard which I entertain for him,
" that I should say that I think his decision is made under an er
" roneous impression in respect to creditor's suits, which have
" grown up since he left the bar, and with which his judicial career
" has never brought him into direct contact.

" Thus, although until the property of the debtor is discovered,
" the lien must, as he says, be apparently floating and in abeyance,
" it is, in this respect, no different from the lien of a judgment
" upon lands, or an execution upon goods, until such lands or goods
" are discovered. But like the latter when levied, and unlike the
" judgment, the lien by the creditor's suit becomes *specific*,
" upon such assets as are discovered. And again, unlike the gen-
" eral lien, it does not affect after acquired property.

" The power to prevent a transfer of the property by the defend-
" ant does not follow or depend upon the discovery of the proper-
" ty. In practice, it always precedes the defendant's appearance,
" the injunction being taken out with the subpena, and its object
" is to prevent the defendant from disposing of the property, and
" thereby defeating the lien. And, lastly, although, as the judge
" remarks, the fund is subjected by the court to the equitable rights
" of all parties, yet it therein resembles every other fund which
" comes within the jurisdiction of the court, and as between dif-
" ferent claimants by creditor's suits, is, as we have seen, disposed
" of according to the priority of such suits, as shown by the order
" in which they were commenced."

In the note referred to in 1 Kent's Com., page 263, 8th edition, after referring to several cases there cited as to the lien which would not defeat the priority of the United States, the Chancellor says:

" The courts of the United States and several of the State courts " maintain a different doctrine. The doctrine is, that a creditor, by " by his suit in equity, commonly called a creditor's bill, on his " unsatisfied judgment thereby acquires a lien, and which operates " as an attachment of property, and creates a right to priority of " payment as against the assignee of a bankrupt, under a petition " in bankruptcy subsequently made. That such a lien was not " divested by a decree in bankruptcy, upon a petition filed sub- " sequent to the commencement of a chancery suit, or the levy of " attachment.

" That the assignee, in such a case, takes the debtor's property " subject to the creditor's lien, even independent of the proviso " in the bankrupt act, and upon general principles applicable to " insolvency and bankruptcy in this country and in England.

" That the assignee of the bankrupt or insolvent takes only " such rights, and subject to such equities as belonged to the " bankrupt himself at the time of the bankruptcy; that the judg- " ment creditor had also a lien, upon the true construction of " the proviso in the 2d section of the bankrupt law, paramount " to the claim of the assignee, and as strong upon this proviso " as upon general principles of law, for the word *securities* reaches " all mortgages and liens, and they may be enforced in the State " courts. The attachment is a lien, and the creditor's bill a lien " within the proviso, and the property of the bankrupt was not " divested until the decree in bankruptcy. The decisions in the " Circuit Courts of the United States in Vermont, New Jersey, " and Pennsylvania, and of the District courts of Vermont, of " Northern New York, and of several of the State courts, are all " cited in support of this doctrine by the Assistant Vice Chan- " cellor of New York, in the case of *Storm* v. *Waddell*, 3 N. Y. " Legal Observer, 367, S. C., 2 Sandford Ch. R., 494, and which " case is distinguished for its learning and ability, and its logical " vindication of the doctrine. The two cases of *Kittrege* v. *War-* " *ren* and of *Kittredge* v. *Emerson*, decided in the Supreme Court

" of New Hampshire, in the year 1844, and in which the judg-
" ment of the court was delivered by Mr. Chief Justice PARKER,
" are equally worthy of special notice for their learned research,
" and powerful, if not irresistible, deductions. The doctrine of
" the New Hampshire courts has been finally established in the
" Supreme Court of the United States. *Peck* v. *Jenniss*, 7 How.
" R., 612. Id., 626.

In the case of *Ex parte, the General Assignee in re* v. *Allen*, 1 N. Y. Legal Observer, Judge CONKLIN, says:

" The proceedings in the court of chancery, of this state, by what
" is familliarly known as a 'Creditor's Bill', is a highly stringent
" remedy in favor of judgment creditors, given (or recognized) and
" regulated by statute; and its operation and effect are to be deter-
" mined by reference to the decisions of the state courts, so far as
" they furnish an intelligible guide. It is limited to judg-
" ment creditors, and can be resorted to, by them, only after
" they have exhausted their remedy at law, by a fruitless effort to
" obtain satisfaction by writ of *fieri facias*. Its especial object is
" to discover and reach the property of the judgment debtor not
" subject to execution at law. No one doubts that at some stage
" of it, the prosecuting creditors acquires an exclusive right to sat-
" isfaction out of the property of the defendant, when it is not
" bound by any prior lien. This right can be nothing less than a
" lien, valid by the laws of the state, and the only question is, at
" what stage of the proceeding does it attach. And upon this point
" the decision the courts of appear, to me, to leave no room for doubt.
" It has been repeatedly decided that such lien is acquired *at the com-*
" *mencement of the suit*—that is to say, by filing of the bill and service
" of the subpena. It is sometimes called a preference, sometimes a
" priority, sometimes simply a lien, and sometimes a specific lien;
" and it has uniformly been held to prevail over any subsequent
" voluntary assignment by the debtor; and, what is still more per-
" tinent, and, as it seems to me, ought, of itself, to be nearly deci-
" sive of the question in this court, over a subsequent assignment

" under the insolvent acts. 2 Paige, 333; *ib.* 567; 20 Johns. 554; " 4 Johns. Ch. 687; *Hayden* v. *Bucklin, et al.*, 9 Paige, 512; (re- " cently decided by the Chancellor), in which it is decided that the " lien is not created by the mere filing of the bill alone, but that " the service of a subpena is also necessary.

" The only case I have met with, which seems to militate at all " against this doctrine, is that of *Lansing* v. *Robinson*, 7 Paige, " 364. In that case, it is said, that a judgment creditor may levy " on the property of the defendant, which is the proper subject of " a levy and sale on execution, notwithstanding the pendency of a " suit against him, by creditor's bill, brought by another judgment " creditor, at any time 'before the title of the defendant in such " property is equitably divested, by an order for a sequestration " thereof, or for the appointment of a receiver.' But there is " nothing in this case, properly understood, which conflicts with " the other cases to which I referred.

" The remark I have mentioned is, in fact, but a repetition of the " language of one of the general rules framed and promulgated by " Chancellor WALWORTH several years before, under a comprehen- " sive power given to him, by statute, for that purpose. I am not " fulle apprized of the policy which dictated this rule. But the " particular and more appropriate design of a 'Creditor's Bill', is to " enable the creditor to appropriate such property of the debtor as " is not liable to seizure by *fieri facias;* and as the practice is to " require the defendant to assign, to the receiver, all his property, " whether subject to execution or not, it was probably thought but " just to other creditors, to take care that no unnecessary impedi- " ment should be thrown in the way of their ordinary legal remedy. " The right, thus reserved, of levying on the property of the de- " fendant after the commencement of the suit, is, therefore, but a " particular exception, which tends the more clearly to establish " the general rule.

" My conclusion then is, that by the institution, and diligent " prosecution, of a suit, by a creditor's bill, without collusion with

" the defendant, and in good faith, the complainant acquired a lien " on the property of the defendant; which is not divested by a de- " cree of bankruptcy, entered upon a petition filed by, or against, " the defendant, subsequent to the full commencement of the " suit."

In the case of the *United States* v. *Canal Bank*, 3 Story's Rep., 79, it was held that: "A lien of a judgment creditor, duly per- " fected, could not be displaced by the mere priority of the United " States." We cite this case to show that Judge STORY considered that the lien, of a judgment creditor, was a substantial right, not a mere thing or lien, in abayance, not to be brought into existence until reached by the arm of the court, through a receiver. The priority of the government, which was given by positive law, would not displace such a lien. It is evident that the lien, here referred to by Judge STORY, when duly perfected, must be the lien which the creditor requires, upon filing his bill and service of process, after judgment and execution.

We have spent more time than, perhaps, was necessary, upon the law of lien, in cases of judgment creditors' suits, and have presented many authorities, some of them from the most able judges of their day. In our searches for cases upon that point we have found one which may be said to sustain the contrary doctrine. We propose to briefly consider it.

Jones v. *Smith*, 1 Walker Ch. Rep. (Mich.) p. 115.

The case was one of creditor's bill filed against Smith in his life-time, and no answer, or decree, had before his death. Jones filed a petition to revive the suit, and to reach the effects of the estate by virtue of the lien claimed by him. It seems that the petition was predicated upon the statute, which is the same, or nearly so, as that in New York and Illinois. The Chancellor held that as the statute did not, in terms, make the filing of the bill a lien on the property of the debtor, no lien existed; although, he says, the

statute armed the court with power to compel discovery and prevent a transfer of property. The Chancellor also held, that it was a law of the court to give preference to creditors who come first to obtain satisfaction out of equitable assets. The Chancellor admits that this preference is sometimes called a lien in the books, and seems to have thought, at the time, that if the property had been discovered by the answer of the defendant, or transferred to a receiver in the suit, then the lien would have existed; as he says, until then there is nothing specific for the lien to attach.

It is very evident that this case was not fully considered, as there were no authorities cited by counsel or by the Chancellor. But it was a general bill to reach effects not known nor mentioned in the bill, but simply a bill calling on the defendant to state whether he had any effects or not, and if he had any, to hand over, &c.

It is proper here to remark, and should have been before noticed, that the bill, in the case now under consideration, did state the fact that Brewster had property, both personal and real, notes, choses in action, which he had transferred to Clark & Brewster, and that the transfer was void; so that the bill did state, and all parties did know, what specific property was sought to be reached, as the assignment described all the property, both personal and real, definitely, and then, besides that, the assignment was recorded, so that there was property pointed out upon which the lien could attach; and the rights of the appellants were fully known to all, as much so as though the property had all been specifically described in the bill; or had been deposited with the court; or had been placed in the hands of a receiver, as, in either case, the effect, or value, of the lien would have been contingent upon the recovery of a decree, without which the lien would, of course, be lost.

In the case *Exparte Waddell* v. *Coster*, 1 N. Y. Legal Observer, p. 53, opinion by Judge Betts, in which it was held, that a creditor's bill, although filed prior, and a conveyance made, to the filing

of petition to be declared a bankrupt, a lien did not attach, and that the estate and effects of the bankrupt vested in the general assignee.

This opinion is the one considered by the Vice Chancellor in 2d Sanford. In this opinion there are many things stated which tend to sustain some of the positions taken by us, to which we desire to call the attention of this court.

It may be proper to state, that in this case, the question was, whether the choses in action passed to the general assignee, or whether they belonged to the receiver appointed under the creditor's bill. On the 9th of April an order for the appointment of a receiver was had, and on the 25th a receiver was appointed, and on the the 27th the debtor assigned to a receiver, and on the 30th of the same month a decree of bankruptcy was made. There can be no doubt the learned judge considered that the decree of bankruptcy had the same effect upon the estate that a decree dismissing the creditor's bill would have had, as the debtor was, by the bankrupt court, discharged from the debt, and there being no debt, or judgment in force against the debtor, the lien ceased to exist, and the property thereby because discharged from the chancery proceedings. Such would seem to be the only grounds upon which the ruling could have been made.

It seems that Judge Betts did not agree with the Circuit Court of the First Circuit, as, he says, "I regret to find the decisions of "this court do not harmonize with the learned and forcible reason- "ings of the Circuit Court of the First Circuit, in respect to the "import and application of the phrase 'any lien,' used in the pro- "viso of the second section of the hankrupt act." Thus, it would seem that the learned judge considered that the meaning of 'any lien' referred to privileges and charges upon the thing recognized by local statute, or long established usages, or the principles of general law. This being the position of Judge Betts upon the question as to what liens the act excepted, it is plain to be seen

how he fell into the error, which is apparent from his own reasoning of the case.

Judge BETTS says that the decision of the question of lien must rest upon the provisions of the statute, and refers to 2 R. S. 173, sec. 38 and 39. This statute is the same as Illinois.

He says "that it is very clear that the statute does not assume to "act directly upon the assets of a judgment debtor, to bind them "specially in the way real or personal estate is bound by judgment "and execution. A power is conferred upon the Court of Chan- "cery funded upon the equity therein designated."

"Whether this be an inherent or only a statutory jurisdiction "of the court, the legislature has pointed out, plainly, its office "and the method of its exercise, and the question is whether it be "a necessary incident to such suit that the particular property "sought to be controlled should be definitely bound by it from its "inception."

All these inquiries are very proper, and very easily answered differently from the conclusion of Judge BETTS.

If the Court of Chancery had no such power, without the statute, it is very plain that the statute confers the right to proceed, and the power, in the court, to enforce. If the statute gives the right to seek out and discover equitable assets, in satisfaction of the judgment, it certainly means that the creditor doing this shall have the benefit of the discovery, and cannot mean, as Judge BETTS says, that another creditor may reap the benefit of the discovery if he happens to put his hands upon it first, after it is discovered. If such is the law, then powers conferred in courts are mere idle powers, and must remain inactive, and allow the creditor who first actually siezes the discovered property, even by force, to reap the benefit. Where there is a right conferred, and a power given to a court, by statute, and the party places himself within the law, as a

necessary incident, that whatever is necessary to accomplish the act, and secure the right, follows, and the statute, by the action of the court, then acts directly upon the property, if any the debtor has, and becomes definitely bound from the moment the court acts upon the right of the party.

Why should this not be so as much as the lien of an execution, as soon as delivered to the sheriff, or the lien of a judgment, from the time it is docketed, as provided by law? One is as definite as the other; one requires the act of the party and clerk to create the lien of a judgment; another the act of the party, and the sheriff to endorse, to create the lien of an execution, and the other the act of a party, after having an execution returned unsatisfied, and the court of chancery, in which to file his bill and serve process to create the lien in that case. The objection that the property is not discovered, upon the service of process, and that it is not known whether there be any, in fact is not well taken, for the reason that, in case of an execution, it has been held, over and over again, in this State, that on the delivery to the sheriff, it was a lien upon personal property, subject to levy from that moment, and would remain so for ninety days without a levy; that such lien attached wherever the property might be, in the county, whether in the hands of the debtor or not, if, in fact, it belonged to him. In such a case there is no specific property pointed out, or known to the party or the sheriff, and with as much reason it might be said that such a lien must be floating, and in abeyance, until the sheriff could find the property, or until the property could be actually reduced to possession. If the debtor has any property, then the lien of the execution attaches. If he has any equitable assets, no matter where they may be situated, the proceedings, by creditor's bill, as soon as he is served with process, gives the lien, under the statute, as effectual as though the property was within the view of the court, and specially described in the bill. The creditor is to find it before he can enforce a sale, of course; but that is no reason why the lien should not exist. The question does not arise as to what title an innocent purchaser might get to the property while in

the hands of the debtor, or any one holding it for him. The question is, as to the lien, as to all those who have notice, and, so far as we can see, there is no reason on earth why another party, who had notice, should, by any process, be entitled to the property discovered by a judgment creditor, who has complied with the law, in all respects, to entitle him to the benefit of his dilligence. It is not necessary to give this lien, that the statute should have declared that the lien when the bill filed shall bind all the choses in action, or equitable assets, specifying the kind of property. The statute giving judgment liens does not specify what form, what lot, but simply all real estate of the party; so it is as to execution lien; it shall bind the personal property. And so we say of the statute giving the right to proceed in chancery to compel a discovery of any property, or thing in action, due him, or held in trust for him, &c. This, we say, is as definite, and as easily enforced, as the statute in relation to execution liens.

Judge Betts says that "the power of the court under the stat-"ute to prevent a transfer of the property would be unnecessary if "the property was bound by the commencement of the suit." It will be seen that here is a great error in the learned judge; as in many cases, unless the court, by requisition, prevented the debtor from making transfer, it would be impossible for the creditor to reach the property; and we have known cases where the court issued the writ of requisition and prohibited a transfer, it then was impossible to reach the property, and the creditor compelled to be satisfied by seeing the debtor punished for contempt. It is evident that Judge Betts never saw much of creditor's bills, as creditors in the West are compelled to resort to them to obtain even a small per cent. of their rights.

The opinion further states, "But the tenor of the section mani-"festly denotes that the power is not conferred to uphold and effec-"tuate a lien as such, but to detain every species of property and "interest, tangible and equitable, where it may be operated upon "when, by the ultimate judgment of the court, it shall be found "liable to the application sought for."

Now, if the court please, there can be but little difference between a power to uphold and effectuate a lien or a power to detain every species of property of the debtor until final decree, and then to dispose of sufficient to pay and satisfy the decree. If the power exists to detain and hold the property for that purpose, it is such a lien or right in the creditor as to give him the benefit thereof, which is all that is necessary.

Judge BETTS admits that the "term lien is used in the New York "and English cases as denoting a fixed priority of right, acquired "by the prosecuting creditor over others standing in other respects "on legal and equitable equality with him, but not in a strict and "technical sense, as denoting a fixed security in the thing." He also says that "they (meaning the New York and English cases) "regard the lis pendens as overriding all subsequent transactions "and security to the prosecuting creditor, the enforcement of the "remedies he might claim, had the estate or means of the debtor "continued to the decree in the same situation they were when the "bill was filed," and accordingly speaks of such operation of the suit as a "lien."

From this opinion, it is evident that the learned judge could not say that there was not a right fixed and secured to the creditor which was in effect a lien upon the property. It can make no difference whether it is called a preference, a priority, a lien, or a right. It is sufficient if it does give the property or assets to the creditor in satisfaction of his debt in preference to all others.

We submit to the court, that from an examination of the case referred to, it will be found that the law upon this point has been for a long time fully and satisfactorily settled. If such is not the case, we might truly say in the language of Judge WOODWORTH, *Hadden* v. *Spader*, 20 J. R., p. 362: "It would be a matter of surprise, as "well as regret, if, in a system of jurisprudence that has been ma-"tured by the wisdom of ages, adequate remedies were not pro-"vided for the violation of every important civil right. * * * * "The rules and maxims of a court of chancery are as fixed as those

" which govern inferior jurisdictions. * * * * To determine,
" in every case, the precise boundary may be a difficult and deli-
" cate task. Such a conflict, however, cannot be of frequent occur-
" rence, because the general powers of courts are defined with suf-
" ficient accuracy to guard against excess of jurisdiction."

We also submit to the court that the authorities referred to fully show that the appellants, by their proceedings, obtained a right and lien upon the property in question at the time of service of process, January 6th, 1858, that the right and lien thus acquired by the court, taking jurisdiction of the parties and matters in dispute are, to the appellants, as positive and effectual as it would be in case an execution had been levied upon the real estate transferred by Brewster to his assignees, and the other effects of the estate had been subject to execution and a levy actually made. If we are correct in this position, then the court had exclusive jurisdiction of the property, and no power could intefere to prevent the court from adjudicating upon the question, and giving to the appellants the proceeds of the property through a receiver to be appointed. It has been held, in the case of garnishment, where the effects remained in the hands of the garnishee, the possession of the property was in *custodia legis*. (Drake on Attachments, 453, and cases there cited.)

There can be no doubt that such a lien does exist in the case under consideration. That actual possession of the property by an officer of court is not necessary to the enforcement of the lien.

Having, as we think, fully sustained the first point made—both as to the notice, and the right or lien—we will now proceed to consider the second point in the order of our argument, and show, by authority, that the State court, had no right or authority to interfere with the jurisdiction of the Circuit Court for the Northern District of Illinois, and that such proceedings were a nullity as against the rights of the appellants.

II.

In presenting this point we propose to consider, at some length, the law as to conflict of jurisdiction between the State and Federal courts, as well as conflict generally, not for the reason that we consider the question one of doubt, but for the reason that there is at this time in the West, an opinion prevailing to a considerable extent among the profession that the State court has the same authority to pass upon matters within the jurisdiction and custody of law in the Federal courts, that they have in other State circuit or county courts.

To sustain the point we submit the following authorities:

Payne v. *Drew*, 4 East., 523, 538 new edition.
The Ship Robert Fulton, 1 Paine 621.
Smith v. *McIver*, 9 Wheat., 531.
Hagan v *Lucas*, 10 Peters, 400.
Peck v *Jenniss*, 7 How., 612.
Shelby v. *Bacon*, 10 How., 56.
Taylor v. *Carryl*, 20 How., 591.
Allman v. *Booth*, 21 How., 506.
Freeman v. *Howe*, 24 How., 455.
Exparte Robinson, 6 McLean, 355.
State v. *Yarborough*, 1 Hawks, 78.
Thompson v. *Hill*, 3 Yerger, 167.
Hall v. *Dana*, 2 Ark., 381.
Eaton v. *Patterson*, 2 Stew. & Por., 9.
Beatty v. *Ross*, 1 Branch, 198.
Merrill v. *Lake*, 16 Ohio, 373.
Brooks v. *Delaplaine*, 1 Maryland Ch. Dec., 351.
Winn v. *Albert*, 2 Maryland Ch., Dec., 42.
Gould v. *Hayes*, 19 Ala., 438.
Clipper v. *State*, 4 Texas, 242.
C. P. & A. R. R. Co. v. *City of Erie*, 1 Grant's Case, (Penn.,) 212.

Exparte Bushnell, v. *Exparte Langston*, 8 Ohio, (N. S.,) 509.

Breevort v. *McJimsey*, 1 Edw. Ch. R., 551.

In the case of 4 East., 523, referred to, which was an action against the sheriff for releasing goods seized upon an execution, where they had been sequestered, the plaintiff claiming that the writ of sequestration had become inoperative from the lapse of time, on the part of the creditor. The court, with respect to the right of the sheriff to levy, says:

"It appears to me, therefore, not to be contradictory to any "cases nor any principles of law, and to be mainly conducive to "public convenience, and to the prevention of fraud and vexatious "delay in these matters, to hold *that where there are several author-* "*ities, equally competent, to bind the goods of the party when exe-* "*cuted by the proper officer, that they shall be considered as effec-* "*ually, and for all purposes bound by the authority which first ac-* "*tually attaches upon them in point of execution, and under which* "*an execution shall have beeh first executed.*

In the case of the ship *Robert Fulton*, 1 Paine, 121, above referred to—it being a question of jurisdiction between the Federal and State courts—the court on page 626, says:

"That the State tribunals had authority also to enforce the lien "in the present case, is very certain from the express provisions of "the law. There was, then, a concurrent jurisdiction in the two "courts, and the proceedings, under the State authority, were in "the nature of the proceedings *in rem.*

"And the right to maintain the jurisdiction, must attach to that "tribunal which first exercises it, and takes possession of the thing "in litigation. This course is indispensable, in order to avoid a "clashing of jurisdiction. So far as respects the appellants, they "had made their election, as they had a right to do, to proceed in "the State court to enforce their lien, and, whatever rights they had

" thereby acquired, could not be taken away against their consent. " And if, as I consider it, the claim and petition of the appellants " was an assertion of that right, the court erred in not leaving them " to prosecute their claims in that court, or, at all events, giving " them the election, as was done with respect to others, who had " taken out attachments under the State laws.

" Whether the appellants have acquired any priority in the sat- " isfaction of their claim, by virtue of the attachment sued out by " them, is a question not here to be decided. That is a question " for the State court."

In the case of *Smith* v. *McIver*, 9 Wheaton, 531, above referred to, where an ejectment suit was brought in the State court, and a bill filed in the Federal court, claiming title to the same lands, and disputing the right of the plaintiff in the ejectment suit, the court say, at page 535:

" In all cases of concurrent jurisdiction, the court which first has " possession of the subject, must decide it. The questions, in these " cases have all been decided at law, and the party can have no " right to brig them on again before a court of chancery. Were " a court of equity, in a case of concurrent jurisdiction, to try a " cause already tried at law, without the addition of any equitable " circumstances to give jurisdiction, it would act as an appellate " court, to affirm or reverse a judgment already rendered, on the " same circumstances, by a competent tribunal. This is not the " province of a court of chancery."

In *Hagan* v. *Lucas*, 10 Peters, 400, where the question was between the marshal and the sheriff, the sheriff, having levied upon the property, took a delivery bond and passed the property over to the debtor. Afterwards the marshal levied upon the same property. The court held that, notwithstanding the execution of the bond, and the delivery to the debtor, the property was still in the custody of the law, and the sheriff held it as against the marshal.

In the case of *Peck* v. *Jenniss*, 7 How., 612, the question there was, as to the right of a State court to proceed in an attachment, where goods had been siezed before the party went into bankruptcy—the court, at page 625, says:

"It is a doctrine too long established to require a citation of au-
" thorities, that, where a court has jurisdiction, it has a right to
" decide every question which occurs in the cause, and, whether its
" decision be correct or otherwise, its judgment, until reversed, is
" regarded as binding in every other court; and that where the
" jurisdiction of a court, and the right of a plaintiff to prosecute
" his suit in it, have once attached, that right cannot be arrested or
" taken away by proceedings in another court. These rules have
" their foundation not merely in commity, but on necessity. For if
" one may enjoin, the other may retort by injunction, and thus the
" parties be without remedy; being liable to a process for contempt
" in one, if they dare to proceed with the other. Neither can one
" take property from the custody of the other, by replevin, or any
" other process—for this would produce a conflict extremely em-
" barrassing to the administration of justice."

In *Beatly* v. *Ross*, 1 Branch, 198, it was held, that in cases of " concurrent jurisdiction, the court first acquiring jurisdiction of an " action, will retain it.

In *Merill* v. *Lake*, 16 Ohio, 373, it was held, that the Supreme Court and Court of Common Pleas, having equal and concurrent jurisdiction in certain cases in chancery, if the Common Pleas obtain possession of the case by bill, they will retain it for final disposition.

In *Brooks* v. *Delaplaine*, 1 Maryland Ch. Dec., 351, it was also decided, that where two courts have concurrent jurisdiction, the court in which the suit was first commenced, is entitled to retain it.

In *exparte Robinson*, 6 McLean 355, it was also held that "where "concurrent jurisdiction may be exercised by the Federal and "State authorities, the court which first takes jurisdiction can be "interfered with by no other court, State or Federal. It is a sub- "version of the judicial power, to take a case from a court having "jurisdiction, before its final decision is given."

In *Clipper* v. *State*, 4 Texas, 242, it was decided that, where different courts have concurrent jurisdiction, that which acquires it first, is entitled to go on to judgment.

In *exparte Bushnell*, v. *exparte Langston*, 8 Ohio, (N. S., 509,) the court decided that, "where a court of general jurisdiction, and "legally competent to determine its own jurisdiction, has ac- "quired a prior jurisdiction, *ipso facto*, over the person or sub- "ject matter, no other court will intefere with, or seek to arrest "its action, while the case is still pending and undetermined."

In *Brevoort* v. *McJimsey*, 1 Edw. Ch. Rep., the court held that: "As chancery had taken cognizance of the case, no subseqent con- "duct of, nor any act of, any other tribunal could take from it the "power to preceed."

The case of *Freeman* v. *Howe*, above referred to, which was a case of attachment in the Federal Court, where the property was seized by the marshal, and afterward replevied from the marshal by the State court, the court say in opinion, by Justice NELSON:

"The majority of the court were of the opinion that, according "to the course of decision in the case of conflicting authorities un- "der a State and Federal process, and in order to avoid unseemly "collision between them, the question as to which authority should, "for the time, prevail, did not depend upon the rights of the re- "spective parties to the property seized, whether the one was par- "amount to the other, but upon the question, which jurisdiction "had first attached, by the seizure and custody of the property "under its process. * * * * * And in the condition

" of the present case more than this is involved; for the property " having been seized, under the process of attachment, is in the " hands of the marshal, and the right to hold it being a question of " the Federal court, under whose process it was seized, to deter- " mine, there was no authority, as we have seen, under the process " of the State court to interfere with it. We agree with Mr. Jus- " tice GRIER, in *Peck et al.* v. *Jennis et al.*, 7 How., 624-5. 'It is a " doctrine of law too long established to require citation of author- " ities, that when a court has jurisdiction, it has a right to decide " every question which occurs in the cause, and whether its decision " be correct or otherwise, its judgment, till reversed, is regarded as " binding on every other court.' And, that where the jurisdiction " of a court and the right of a plaintiff to prosecute his suit in it, " have once attached, that right cannot be taken away by proceed- " ings in another court. Neither can one take the property from " the custody of the other, by replevin or any other process, for " this would produce a conflict extremely embarrassing to the ad- " ministration of justice."

Many other cases cited fully sustain the principle presented in the second point made by the appellants, but we will not specially note them further.

We submit, may it please the court, that the cases cited show that different courts of the State, having concurrent jurisdiction, that which acquires it first, as to the parties and the subject matter of the suit, must determine all the questions; and that no other court can interfere to prevent, or take from that court, first taking cognizance of the case, the party or property to defeat the object of the suit, or, in any way, to interfere with the rights of the parties litigating, or either of them.

Authorities cited, also show, most clearly, that in cases of concurrent jurisdiction, between the State and Federal courts, the court which first takes jurisdiction, cannot, in any way, be interfered with; and when it it has acquired a prior jurisdiction of the person

and subject matter, no other court can, by any process, acquire jurisdiction of the property, which is the subject matter of the suit.

In the case of ship *Robert Fulton*, 1 Paine, 621, the court uses the words, "and takes possession of the thing in litigation." In that case, the possession was not a question as to the right of the court to proceed, therefore, these words do not appear to have been used to show that possession was necessary to enforce its jurisdiction. The proceeeding was *in rem*, and the use of the word "possession," applied to that particular case, and not to the general doctrine that one court cannot interfere with another to arrest its jurisdiction, or deprive it of the porperty necessary to the enforcement of the rights of the parties.

III.

We come now to consider our last point in the case; and the question is, had the appellants the right to enforce a transfer and sale of the property and effects of Brewster, and, in case the assignees refused to surrender, were the appellants entitled to a decree against them to pay the money.

The right to prosecute a suit to a final determination, takes with it the right to have and receive all the benefits which that suit would give if no impediments had been interposed by any other tribunal. This right, we have seen, these appellants had by the jurisdiction of the court of the parties and subject matter of the suit. This being the fact, as well as the law, then the appellants had the right to reap, as a reward of their diligence, the avails of the equitable assets, in the hands of the assignees, which belonged to John K. Brewster.

In the case of *Weed* v. *Small*, 3 Sand. Ch. Rep., 273, which was a judgment creditor's suit, Weed having received a transfer *pendente lite*, the court, on page 276, say:

"My conclusion is, that Kent had acquired an equitable lien "upon the claim in question before it was assigned to N. Weed,

" which was valid against the latter, taking his assignment with " notice of Kent's proceedings, and that the receiver in Kent's " suit became vested with such lien and with all H. Weed's title " to the claim."

In the case of *Porter* v. *Williams & Clark*, 5 How. Pr. Rep., 441, which was a supplementary proceeding analogous to a creditor's bill, and in which case a second assignment was made by the debtor two days after the order was entered under the supplementary proceedings, it was held that the second assignment could not defeat the lien created upon the equitable assets, and that the assignee could not take the property under the second assignment.

In the case of *Edmeston* v. *Lyde*, 1 Paige, 640, the Chancellor says, in referring to the case of Lord Hardwick: "But after bill " broght and *lis pendens* created as to this thing, (the property in " question) such assignment could not prevail," (having reference to a transfer after *lis pendens* created).

In the case before referred to, *General Assignee* v. *Allen*, 1 N. Y. Legal Observer, 117, Judge CONKLIN says: "That the lien created " by the filing of the bill has uniformly been held to prevail over " any subsequent voluntary assignment by the debtor, and what is " still more pertinent, and as it seems to me, ought of itself to be " nearly decisive of the question in this court, over a subsequent " assignment under the insolvent act."

Judge CONKLIN then refers to several authorities which tend to the same point; that is, that where a lien of this kind has been acquired, no transfer whatever of the property can divest the party of his right.

The real estate assigned by Brewster, passes with the equitable assets, and is subject to the same rule, the title at the time of filing of the bill not being in Brewster. The statute before referred to,

section 37, gives to the court the power to compel a discovery and apply all the property of the debtor, whether the same was originally liable to execution at law or not.

This statute creates a rule of property, which will be enforced in the Federal court as fully as in the State court. We submit that the rule in equity is the same in fact without the provisions of the statute. In Clarke's Ch. Rep., 591, the court says:

"The statute only affirmed a previously well recognized ground "of jurisdiction in this court, and was passed probably because "there was or appeared to be, some apparent conflict in former de- "cisions. It introduces no new rule either as to principle or prac- "tice. It gives no new lien, and when the courts say that a credi- "tor's bill filed under it, is a lien upon the property which cannot "be levied upon at law, they only affirm anciently established "principles, and mean to declare that in this, as in all other cases, "the party who is the first in this court with a pending suit, shall "first reap the reward of his diligence."

The transfer of the real estate to the assignees by Brewster, which was alleged in the appellant's bill of complaint to have been fraudulent as to them, and so decreed by the court, was not in a situation to be reached by execution without the aid of a court of equity. Therefore the real estate became subject to the same lien as equitable assets, and can be reached through a receiver by the decree of the court in this proceeding. We do not see any objection, either in law or in practice, to this rule.

In *Edmeston* v. *Lyde*, 1 Paige, 41, the court say: "The princi- "ple being established that every species of property belonging to a "debtor may be reached and applied to the satisfaction of his debts, "the powers of this court are perfectly adequate to carry that prin- "ciple into full effect."

The decision of some courts to the effect that tangible property,

after a fraudulent assignment, might be levied upon and sold and the fraudulent transfer disposed of afterwads, does not, in our opinion, change or modify the rule claimed by the appellants, because, in all such cases, where a levy has been made after the pendency of a suit to reach such property, it has been held to be subject to the equitable lien thus created. So it will be seen that a judgment creditor may proceed by his bill in equity to reach all kinds of property, whether personal or real, or choses in action, which had been fraudulently transferred by the judgment debtor.

We have already taken more time in this case than we ought to have taken, but the importance of the question, especially in the Western States, where the Federal courts have had hundreds upon hundreds of such cases before them, and have at this time to our knowledge a great many pending, and must have many for years to come, we feel a great interest in having the law definitely settled, so that we can know whether a friendly creditor and the debtor can, by a conspiracy, render the court powerless to enforce the law and give to parties rights which they are justly entitled to. But we will only say, in conclusion, that it seems to us most clear, that the law is well settled, that courts of different and of the same jurisdiction, cannot interfere with each other, either in process, person, or property, to prevent the first jurisdiction, which attaches or takes cognizance of the subject matter in dispute, from determining the case conclusively. No authority, whatever, can interpose to dives the court of its jurisdiction, or prevent its action, or take from it that which would render the jurisdiction powerless.

Let us, for a moment, consider the action of the parties to the proceeding in the State court. Soon after the service of process in this case, the parties appear in Winnebago county, on the first day of February, 1858, no doubt about four o'clock in the afternoon, and a bill is filed by Mitchell & Co., who appear to be preferred creditors, charging the assignees with neglect of duty. The assignees are present to receive service, and submit to the charge and confess a decree. In a few hours thereafter they deliver to

Mitchell the property and effects, to be taken to himself, under the assignment. When this was done, the assignees, Mitchell, and all the parties, well knew the fact of the proceedings by the appellants, to set aside the assignment, and subject the property to the payment of their judgments. The record shows that the parties resided in Freeport, and not in the county where the proceedings were taken, which we consider conclusive evidence of collusion. Such is the character of the transfer of property had to defeat the appellants. This transfer of the property to Mitchell, we submit, is entirely void as to appellants.

If property, situated as the estate in this case was, can, by a proceeding in another jurisdiction, after right and lien had attached, be taken entirely and absolutely from the court, then proceedings, by judgment creditors, after exhausing their remedy at law, are valueless. It will be impossible for man to suggest a case, where the debtor, with the aid of a friendly creditor, could not concoct a proceeding to defeat every action by judgment creditors in courts of equity. If it is necessary to have a receiver appointed and take possession of the effects, before that could be done such a proceeding, as the record in this case shows, could defeat the justice of the court. Notice for an injunction can be postponed; time will elapse before a receiver can be appointed. Assignees refuse or neglect to deliver over, and before that is done, an order comes from another jurisdiction, requiring the assignees to deliver the effects to another, who is appointed ostensibly to carry out the trusts. This order the assignees comply with, and thereby arrest the proceedings, because the property could not be reached; leaving the creditor powerless and his debt lost. Such proceedings cannot, for a moment, be tolerated, much less sustained, by courts of justice. The rights of parties should not be subjected to such fraudulent and falsely concocted schemes to defeat the ends of justice, nor should parties, who use courts of justice in such a manner, go unpunished.

The court below considered that the proceedings gave to appel-

lants a lien upon the property, in the hands of the assignee, at the time of service of process, and that a transfer could be compelled of all the property, in whatever position it might be, except against a receiver having the possession thereof, no matter when, or how fraudulent that possession may have been procured.

If the transfer so made by the assignees to Mitchell, under the circumstances, can, in any possible view, be treated as legal and binding upon the court below, we contend that the effect thereof can in no way take from the appellants the proceeds of the property which remained in the hands of the assignees at the time of the service of process. The assignees are in no way discharged from their liability to the appellants, and, as a further security, the appellants should have the right to resort to the bond required of Mitchell by the Winnebago County Circuit Court, in case the assignees prove to be insolvent and not able to respond to damages. It seems to us the transfer of the property to Mitchell, is a mere substitution of him as an assignee, which having been done after the appellants obtained a lien and right to the proceeds of the property, must be subject thereto. Although the court, in the decree, used the office of receiver instead of assignee, yet the decree provides for the transfer of the property to Mitchell, and directs him to proceed to carry out the trusts according to the terms of the assignment. We submit, therefore, that the effect is the same; that Mitchell is a mere substitute for the assignees, to do their duty, perform their trusts, with no greater power or right to the property than he could have were he the original assignee named in the deed of trust. If this view be correct, then, most clearly, Mitchell can not take, by the proceedings in the Winnebago County Circuit Court, any greater or higher title than a party could take by transfer direct from the debtor, had no assignment been made, and the property in his possession at the time of service of process. A receiver is an officer of the court, who takes the property and holds it subject to equitable claims of all parties. (Edwards on Receivers, p. 270.) Mitchell had no such direction. The proceedings in

the Winnebago County Circuit Court were not by judgment creditors, and could not clothe Mitchell with the office, powers and duties of a receiver.

Having shown, as we believe, that the appellants had acquired a right and lien upon all the property vested in the assignees by Brewster's assignment, which has been declared by the decree of the court to be fraudulent and void as to them, and that the court in Winnebago county could not interfere to arrest the proceedings and take the property from the court below, we submit, may it please the court, that the exception in the decree was erroneous and should not have been made, that the defendants below, John A. Clark and Daniel S. Brewster, should have been required and compelled to surrender and pass the title to the receiver to all the property of the estate, both real and personal, which remained in their possession at the time of service of process, and in default thereof then they should have been required to pay the amount of the decree.

With these remarks we respectfully submit the case on the part of the appellants.

E. S. SMITH,
Solicitor and Counsel for Appellants.

CHICAGO, Feb. 20, 1864.

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